STREAMLINED SALES AND USE TAX AGREEMENT

Adopted November 12, 2002

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ARTICLE I
PURPOSE AND PRINCIPLE

Section 101: TITLE

This multistate Agreement shall be referred to, cited, and known as the Streamlined Sales and Use Tax Agreement.

Section 102: FUNDAMENTAL PURPOSE

It is the purpose of this Agreement to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

A. State level administration of sales and use tax collections.

B. Uniformity in the state and local tax bases.

C. Uniformity of major tax base definitions.

D. Central, electronic registration system for all member states.

E. Simplification of state and local tax rates.

F. Uniform sourcing rules for all taxable transactions.

G. Simplified administration of exemptions.

H. Simplified tax returns.

I. Simplification of tax remittances.

J. Protection of consumer privacy.

Section 103: TAXING AUTHORITY PRESERVED

This Agreement shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service. However, if a member state chooses to tax an item or exempt an item from tax, that state shall adhere to the provisions concerning definitions as set out in Article III of this Agreement.

Section 104: DEFINED TERMS

This Agreement defines terms for use within the Agreement and for application in the sales and use tax laws of the member states. The definition of a term is not intended to influence the interpretation or application of that term with respect to other tax types.

An alphabetical list of all the terms defined in the Agreement and their location in the Agreement is found in Appendix B of this Agreement, the Index of Definitions. Terms defined for use within this Agreement are set out in Article II of the Agreement. Many of the uniform definitions for application in the sales and use tax laws of the member states are set out in Appendix C of this Agreement, the Library of Definitions. Definitions that are not set out in Appendix C are defined when applied in a particular section of the Agreement and are set out in that section of the Agreement. The appendices have the same effect as the Articles in the Agreement.

Section 105: TREATMENT OF VENDING MACHINES

The provisions of the Agreement do not apply to vending machines sales. The Agreement does not restrict how a member state taxes vending machine sales.

ARTICLE II
DEFINITIONS

The following definitions apply in this Agreement:

Section 201: AGENT

A person appointed by a seller to represent the seller before the member states.

Section 202: 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.

Section 203: CERTIFIED SERVICE PROVIDER (CSP)

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.

Section 204: ENTITY-BASED EXEMPTION

An exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

Compiler's note: On October 1, 2005 Section 204 was amended by adding the second sentence. Each member state shall comply with the October 1, 2005 amendment to this section no later than January 1, 2008.

Section 205: MODEL 1 SELLER

A seller that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

Section 206: MODEL 2 SELLER

A seller that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

Section 207: MODEL 3 SELLER

A seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

Section 208: PERSON

An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

Section 209: PRODUCT-BASED EXEMPTION

An exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

Section 210: PURCHASER

A person to whom a sale of personal property is made or to whom a service is furnished.

Section 211: REGISTERED UNDER THIS AGREEMENT

Registration by a seller with the member states under the central registration system provided in Article IV of this Agreement.

Section 212: SELLER

A person making sales, leases, or rentals of personal property or services.

Section 213: STATE

Any state of the United States and the District of Columbia.

Section 214: USE-BASED EXEMPTION

An exemption based on a specified use of the product by the purchaser.

Compiler's note: On October 1, 2005 Section 214 was amended as follows: "An exemption based on <u>a specified use of the product by</u> the purchaser~~'s use of the product~~." Each member state shall comply with the October 1, 2005 amendment to this section no later than January 1, 2008.

ARTICLE III
REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

Section 301: STATE LEVEL ADMINISTRATION

Each member state shall provide state level administration of sales and use taxes. The state level administration may be performed by a member state's Tax Commission, Department of Revenue, or any other single entity designated by state law. Sellers are only required to register with, file returns with, and remit funds to the state level authority. Each member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the sellers registered under the Agreement for that state's tax and the tax of its local jurisdictions, and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered under the Agreement.

Section 302: STATE AND LOCAL TAX BASES

Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Section 303: SELLER REGISTRATION

Each member state shall participate in an online sales and use tax registration system in cooperation with the other member states. Under this system:

A. A seller registering under the Agreement is registered in each of the member states.

B. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.

C. A written signature from the seller is not required.

D. An agent may register a seller under uniform procedures adopted by the member states.

E. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

Section 304: NOTICE FOR STATE TAX CHANGES

A. Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:

1. Provide sellers with as much advance notice as practicable of a rate change.
2. Limit the effective date of a rate change to the first day of a calendar quarter.
3. Notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.

B. Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.

Section 305: LOCAL RATE AND BOUNDARY CHANGES

Each member state that has local jurisdictions that levy a sales or use tax shall:

A. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

B. Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to sellers.

C. For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

D. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

E. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the governing board.

F. Provide and maintain a database that assigns each five digit and nine digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller has attempted to determine the nine digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five digit zip code applicable to a purchase.

G. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (F) of this section. The database records must be in the same approved format as the database records pursuant to subsection (F) of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119(a)). The governing board may allow a member state to require sellers that register under this Agreement to use an address-based database provided by that member state. If any member state develops address-based assignment database records pursuant to the Agreement, a seller or CSP may use those database records in place of the five and nine-digit zip code database records provided for in subsection (F) of this section. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may apply the nine digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

H. States that have met the requirements of subsection (F) may also elect to certify vendor provided address-based databases for assigning tax rates and jurisdictions. The databases must be in the same approved format as the database records pursuant to (G) of this section and must meet the requirements developed pursuant to the federal Mobil Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119 (a)). If a state certifies a vendor address-based database, a seller or CSP may use that database in place of the database provided for in subsection (F) or (G) of this section. Vendors providing address-based databases may request certification of their databases from the governing board. Certification by the governing board does not replace the requirement that the databases be certified by the states individually.

Compiler's note: On October 1, 2005 the following amendments were made to Section 305:

1. *In Section 305 (F) "or CSP" was added after each "seller." In addition, in two places "~~of a purchaser~~" was replaced with "applicable to a purchase."*
2. *Section 305 (G) was amended as follows: "~~Participate with other member states in the development of an~~ Have the option of providing address-based ~~system~~ database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (F) of this section. The ~~system~~ database records must be in the same approved format as the database records pursuant to subsection (F) of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act ~~(4 U.S.C. Sec. 119)~~ (4 U.S.C.A. Sec.119 (a)). The governing board may allow a member state to require sellers that register under this Agreement to use an address-based ~~system~~ database provided by that member state. If any member state develops ~~an~~ address-based assignment ~~system~~ database records pursuant to the ~~Mobile Telecommunications Sourcing Act~~ Agreement, a seller or*

CSP may use ~~that system~~ those database records in place of the ~~system~~ five and nine-digit zip code database records provided for in subsection (F) of this section. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may apply the nine digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase".

3. *Section305 (H) was added.*

The amendment to this section became effective upon adoption.

Section 306: RELIEF FROM CERTAIN LIABILITY

Each member state shall relieve sellers and CSPs using databases pursuant to subsections (F), (G) and (H) of Section 305 from liability to the member state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a member state that provides an address-based database for assigning taxing jurisdictions pursuant to Section 305, subsection (G) or (H) may cease providing liability relief for errors resulting from the reliance on the database provided by the member state under the provisions of Section 305, subsection (F). If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, a member state and the governing board may extend the relief from liability to such seller for a designated period of time.

Compiler's note: On October 1, 2005 Section 306 was amended as follows: "Each member state shall relieve sellers and CSPs using databases pursuant to subsections (F), (G) and (H) from liability to the member state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a ~~A~~ member state that provides an address-based ~~system~~ database for assigning taxing jurisdictions pursuant to Section 305, subsection (G) ~~or~~

~~pursuant to the federal Mobile Telecommunications Sourcing Act will not be required to provide~~ or (H) may cease providing liability relief for errors resulting from the reliance on the ~~information~~ database provided by the member state under the provisions of Section 305, subsection (F). If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, a member state and the governing board may extend the relief from liability to such seller for a designated period of time."

The amendment to this section became effective upon adoption.

Section 307: DATABASE REQUIREMENTS AND EXCEPTIONS

A. The electronic databases provided for in Section 305, subsections (D), (E), (F), and (G) shall be in a downloadable format approved by the governing board. The databases may be directly provided by the state or provided by a vendor as designated by the state. A database provided by a vendor as designated by a state shall be applicable to and subject to all provisions of Sections 305, 306 and this section. These databases must be provided at no cost to the user of the database.

B. The provisions of Section 305, subsections (F) and (G) do not apply when the purchased product is received by the purchaser at the business location of the seller.

C. The databases provided by Section 305, subsections (D), (E), (F), and (G) are not a requirement of a state prior to entering into the Agreement. A seller that did not have a requirement to register in a state prior to registering pursuant to this Agreement or a CSP shall not be required to collect sales or use taxes for a state until the first day of the calendar quarter commencing more than sixty days after the state has provided the databases required by Section 305, subsections (D), (E), and (F). Provided, for the initial implementation of the Agreement pursuant to Section 701, a CSP shall be required to collect sales or use taxes for each member state, subject to the provisions of Section 705, pursuant to the terms of the operating agreement entered into between the CSP and the governing board in order to provide adequate time for testing and loading of the databases.

Compiler's note: On October 1, 2005 the following amendments were made to Section 307:
Section 307 (A) was amended by adding the last three sentences.

Section 307 (C) was amended by adding "and (G)" after "(F)," deleting the second sentence (~~The governing board shall establish the effective dates for availability and use of the databases.)~~ and adding the last two sentences. The amendment to this section became effective upon adoption.

Section 308: STATE AND LOCAL TAX RATES

A. No member state shall have multiple state sales and use tax rates on items of personal property or services after December 31, 2005, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the Agreement.

B. A member state that has local jurisdictions that levy a sales or use tax shall not have more than one local sales tax rate or more than one local use tax rate per local jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates must be identical.

C. The provisions of this section do not apply to sales or use taxes levied on electricity, piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS FROM THE RULES

A. Each member state shall agree to require sellers to source the retail sale of a product in accordance with Section 310. The provisions of Section 310 apply regardless of the characterization of a product as tangible personal property, a digital good, or a service. The provisions of Section 310 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

B. Section 310 does not apply to sales or use taxes levied on the following:

1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.

2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in Section 310, subsection (D). The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to Section 310, subsection (C).

3. Telecommunications services, as set out in Section 315, shall be sourced in accordance with Section 314.

4. Until December 31, 2007, florist sales as defined by each member state. Prior to this date, these items must be sourced according to the requirements of each member state.

Compiler's note: On October 1, 2005 Section 308 (B)(4) was amended by deleting 2005 and inserting 2007. The amendment to this section became effective upon adoption.

Section 310: GENERAL SOURCING RULES

A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

2. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

4. When subsections (A)(1), (A)(2), and (A)(3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

5. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), or (A)(4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

B. The lease or rental of tangible personal property, other than property identified in subsection (C) or subsection (D), shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (A). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).

3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (D), shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this

address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).

3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

D. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (A), notwithstanding the exclusion of lease or rental in subsection (A). "Transportation equipment" means any of the following:

1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

   a. Registered through the International Registration Plan; and

   b. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

3. Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

4. Containers designed for use on and component parts attached or secured on the items set forth in subsections (D)(1) through (D)(3).

Section 311: GENERAL SOURCING DEFINITIONS

For the purposes of Section 310, subsection (A), the terms "receive" and "receipt" mean:

A. Taking possession of tangible personal property,

B. Making first use of services, or

C. Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

Section 312: MULTIPLE POINTS OF USE (Effective through December 31, 2007)

Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form).

A. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

B. A purchaser delivering the MPU Exemption Form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

C. The MPU Exemption Form will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principle of subsection (B) and the facts existing at the time of the sale) until it is revoked in writing.

D. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form to the seller. A direct pay permit holder shall follow the provisions of subsection (B) in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.

Section 312: MULTIPLE POINTS OF USE (Effective on and after January 1, 2008)

A. Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software, or a service that the digital good, computer software, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase an exemption certificate claiming multiple points of use or meet the requirements of Section 312, subsections (B) or (C). Computer software, for purposes of this section includes, but is not limited to computer software delivered electronically, by load and leave, or in tangible form. Computer software received in-person by a business purchaser at a business location of the seller is not included.

1. Upon receipt of an exemption certificate claiming multiple points of use, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

2. A purchaser delivering an exemption certificate claiming multiple points of use may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's books and records as they exist at the time the transaction is reported for sales or use tax purposes.

3. A purchaser delivering an exemption certificate claiming multiple points of use shall report and pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due will be calculated as if the apportioned amount of the digital good, computer software or service had been delivered to each jurisdiction to which the sale is apportioned pursuant to Section 312, subdivision (A)(2).

4. The exemption certificate claiming multiple points of use will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principles of Section 312, subdivisions (A)(2) and (A)(3)) until it is revoked in writing.

B. Notwithstanding Section 312, subsection (A), when the seller knows that the product will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection (A), the seller may work with the purchaser to produce the correct apportionment. The purchaser and seller may use any reasonable, but consistent and uniform, method of apportionment that is supported by the seller’s and purchaser’s business records as they exist at the time the transaction is reported for sales or use tax purposes. If the purchaser certifies to the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit the tax pursuant to Section 312, subdivision (A)(3). In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the information certified by the purchaser.

C. When the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate claiming multiple points of use exemption as required in Section 312, subsection (A), or certification pursuant to Section 312, subsection (B), the seller shall collect and remit the tax based on the provisions of Section 310.

D. A holder of a direct pay permit shall not be required to deliver an exemption certificate claiming multiple points of use to the seller. A direct pay permit holder shall follow the provisions of Section 312 subdivisions (A)(2) and (A)(3) of this section in apportioning the tax due on a digital good, computer software, or a service that will be concurrently available for use in more than one jurisdiction.

E. Nothing in this section shall limit a person's obligation for sales or use tax to any state in which the qualifying purchases are concurrently available for use, nor limit a person's ability under local, state, federal, or constitutional law, to claim a credit for sales or use taxes legally due and paid to other jurisdictions.

Compiler's note: The following amendments were made on April 16, 2005. Each member state shall comply with the April 16, 2005 amendments to this section no later than January 1, 2008.

1) The first paragraph of Section 312 was numbered 312 (A) and was amended by deleting "delivered electronically" after "computer software" in the first two uses of that term; deleting "a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form)" after "with its purchase"; and inserting the material starting with "an exemption certificate".

2) The former subsection 312 (A) was renumbered subdivision 312 (A)(1) and was amended by deleting "the MPU Exemption Form" and inserting "an exemption certificate claiming multiple points of use" prior to the first comma.

3) The former subsection 312 (B) was renumbered subdivision 312 (A)(2) and was amended by deleting "the MPU Exemption Form" and inserting "an exemption certificate claiming multiple points of use" after "delivering"; deleting "business" and inserting "books and" after "the purchaser's"; and deleting "of the *consummation of the sale" and inserting "the transaction is reported for sales or use tax purposes" after "at the time".*

4) *A new subdivision 312 (A)(3) was added.*

5) *The former subsection 312 (C) was renumbered subdivision 312 (A)(4) and amended by deleting "the MPU Exemption Form" and inserting "an exemption certificate claiming multiple points of use" after the first "The"; and deleting "subsection (B) and the facts existing at the time of the sale" and inserting "Section 312, subdivisions (A)(2) and (A)(3)" after "principles" which was made plural.*

6) *Subsections (B), (C) and (E) were added.*

7) *Subsection (D) was amended by deleting "a MPU Exemption Form" and inserting "an exemption certificate claiming multiple points of use" after "required to deliver"; changing the reference from "subsection (B)" to "Section 312, subdivisions (A)(2) and (A)(3)"; and inserting ",computer software," after "digital good".*

Section 313: DIRECT MAIL SOURCING

A. Notwithstanding Section 310, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a Direct Mail Form or information to show the jurisdictions to which the direct mail is delivered to recipients.

1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

2. Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

B. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a Direct Mail Form or delivery information, as required by subsection (A) of this section, the seller shall collect the tax according to Section 310, subsection

(A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

C. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a Direct Mail Form or delivery information to the seller.

Section 314: TELECOMMUNICATION SOURCING RULE

A. Except for the defined telecommunication services in subsection (C), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

B. Except for the defined telecommunication services in subsection (C), a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

C. The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

1. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.
2. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
3. **(Effective through December 31, 2007)** A sale of prepaid calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.

3. **(Effective on and after January 1, 2008)** A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.

4. A sale of a private communication service is sourced as follows:

   a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

   b. Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

   c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

   d. Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

Compiler's note: On April 16, 2005 Section 314, subdivision (C)(3) was amended by inserting "or a sale of a prepaid wireless calling service" after "service" in the first line; and by deleting "mobile telecommunications service that is a prepaid telecommunications" and inserting "prepaid wireless calling" in its place. Member states shall comply with this amendment no later than January 1, 2008.

Section 315: TELECOMMUNICATION SOURCING DEFINITIONS (Effective through December 31, 2007)

For the purpose of Section 314, the following definitions apply:

A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

B. "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.

C. "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

D. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

E. "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.

F. "End user" means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

G. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

H. "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

I. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

J. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service.

K. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

L. "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

M. "Service address" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in subsection (M)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the location in subsection (M)(1) and subsection (M)(2) are not known, the service address means the location of the customer's place of primary use.

Section 315: TELECOMMUNICATION SOURCING DEFINITIONS (Effective on and after January 1, 2008)

For the purpose of Section 314, the following definitions apply:

A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

B. "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.

C. "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

D. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

E. "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.

F. "End user" means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

G. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

H. "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

I. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

J. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

K. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

L. “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

M. "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

N. "Service address" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in subsection (N)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the location in subsection (N)(1) and subsection (N)(2) are not known, the service address means the location of the customer's place of primary use.

Compiler's note: On April 16, 2005 Section 315 (J) was amended by inserting ", except a prepaid wireless calling service," after "telecommunications service in the second sentence. The former 315 (L) and (M) were renumbered 315 (M) and (N) and a new Section 315 (L) was inserted. The cross references in 315 (N) were changed to account for the renumbering. Member states shall comply with amendments to this section no later than January 1, 2008.

Section 316: ENACTMENT OF EXEMPTIONS (Effective through December 31, 2007)

A. A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for the product or for a term that includes the product. If the Agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the Agreement sets out the exemption for part of the items as an acceptable variation.

B. A member state may enact an entity-based or a use-based exemption without restriction if the Agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the Agreement has a definition for the product whose use or specific purchase is exempt, a member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the Agreement definition of the product. If the Agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction.

C. For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

Section 316: ENACTMENT OF EXEMPTIONS (Effective on and after January 1, 2008)

A member state shall enact entity-based, use-based and product-based exemptions in accordance with the provisions of this section and shall utilize common definitions in accordance with the provisions of Section 327 and Library of Definitions in Appendix C of this Agreement.

(1) A member state may enact a product-based exemption without restriction if Part II of the Library of Definitions does not have a definition for such product.

(2) A member state may enact a product-based exemption for a product if Part II of the Library of Definitions has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with Part II of the Library of Definitions and Section 327 of this Agreement.

(3) A member state may enact a product-based exemption exempting all items included within a definition in Part II of the Library of Definitions but shall not exempt specific items included within the product definition unless the product definition sets out an exclusion for such item.

(1) A member state may enact an entity-based or a use-based exemption for a product without restriction if Part II of the Library of Definitions does not have a definition for such product.

(2) A member state may enact an entity-based or a use-based exemption for a product if Part II of the Library of Definitions has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with Part II of the Library of Definitions and Section 327 of this Agreement.

(3) A member state may enact an entity-based exemption for an item if Part II of the Library of Definitions does not have a definition for such item but has a definition for a product that includes such item.

(4) A member state may not enact a use-based exemption for an item which effectively constitutes a product-based exemption if Part II of the Library of Definitions has a definition for a product that includes such item.

(5) A member state may enact a use-based exemption for an item if Part II of the Library of Definitions has a definition for a product that includes such item, if not prohibited in

Subsection (C) (4) of this section and if consistent with the definition in Part II of the Library of Definitions.

For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

Compiler's note: On October 1, 2005 all of Section 316 was repealed and replaced with the current language. The following language was repealed:

A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for the product or for a term that includes the product. If the Agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the Agreement sets out the exemption for part of the items as an acceptable variation.

A member state may enact an entity-based or a use-based exemption without restriction if the Agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the Agreement has a definition for the product whose use or specific purchase is exempt, a member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the Agreement definition of the product. If the Agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction.

For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

Each member state shall comply with the October 1, 2005 amendments to this section no later than January 1, 2008.

Section 317: ADMINISTRATION OF EXEMPTIONS

A. Each member state shall observe the following provisions when a purchaser claims an exemption:

1. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.

3. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.

4. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

5. A member state may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.

6. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.

7. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.

8. After December 31, 2007, in the case of drop shipment sales, member states must allow a third party vendor (e.g., drop shipper) to claim a resale exemption based on an exemption certificate provided by its customer/re-seller or any other acceptable information available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer/re-seller is registered to collect and remit sales and use tax in the state where the sale is sourced.

B. **(Effective through December 31, 2007)** Each member state shall relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.

B. **(Effective on and after January 1, 2008)** Each member state shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on the uniform form and posting it on a state's web site is an indicator) that the claimed exemption is not available in that state; or to a seller who accepts an exemption certificate claiming multiple points of use for tangible personal property other than computer software for which an exemption claiming multiple points of use is acceptable under Section 312.

C. **(Effective on and after January 1, 2008)** Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale.

1. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection (C) the seller may, within 120 days subsequent to a request for substantiation by a member state, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement.

2. Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

3. Notwithstanding the aforementioned, each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. States may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between

the buyer and seller. For purposes of this section a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

Compiler's note: On April 16, 2005 Subsection (A)(8) was added. Subsection (B) was amended to delete "any" and insert "the" after "from" in the first sentence and by inserting all the material after "claim an exemption" in the second sentence. Subsection (C) was inserted. Each member state shall comply with the April 16, 2005 amendments to this section no later than January 1, 2008.

Section 318: UNIFORM TAX RETURNS

Each member state shall:

A. Require that only one tax return for each taxing period for each seller be filed for the member state and all the taxing jurisdictions within the member state.

B. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.

D. Allow any seller that is registered under the Agreement, which does not have a legal requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit its sales and use tax returns as follows:

   1. Upon registration, a member state shall provide to the seller the returns required by that state.

   2. A member state may require a seller to file a return anytime within one year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.

   3. In addition to the returns required in subsection (D)(2), a member state may require sellers to submit returns in the month following any month in which they have

accumulated state and local tax funds for the state in the amount of one thousand dollars or more.

E. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.

F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004.

Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS

Each member state shall:

A. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein. The state shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.

B. Require, at each member state's discretion, all remittances from sellers under Models 1, 2, and 3 to be remitted electronically.

C. Allow for electronic payments by both ACH Credit and ACH Debit.

D. Provide an alternative method for making "same day" payments if an electronic funds transfer fails.

E. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are due to that state on the next succeeding business day.

F. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.

Compiler's note: On October 1, 2005 the second sentence in Section 319(A) was amended as follows: "The state shall allow the amount of ~~the~~ any additional remittance ~~shall~~ to be determined through a calculation method rather than actual collections. Any additional remittances ~~and~~ shall not require the filing of an additional return." The amendment to this section became effective upon adoption.

Section 320: UNIFORM RULES FOR RECOVERY OF BAD DEBTS

Each member state shall use the following to provide a deduction for bad debts to a seller. To the extent a member state provides a bad debt deduction to any other party, the same procedures will apply. Each member state shall:

A. Allow a deduction from taxable sales for bad debts. Any deduction taken that is attributed to bad debts shall not include interest.

B. Utilize the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C. Sec. 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes charged on the purchase price; uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect any debt, and repossessed property.

C. Allow bad debts to be deducted on the return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

D. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

E. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the member state's otherwise applicable statute of limitations for refund claims; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

F. Where filing responsibilities have been assumed by a CSP, allow the service provider to claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP must credit or refund the full amount of any bad debt allowance or refund received to the seller.

G. Provide that, for the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

H. In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states, permit the allocation.

Section 321: CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1

A. The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with Model 1 sellers.

B. As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges; the term "personally identifiable information" means information that identifies a person; and the term "anonymous data" means information that does not identify a person.

C. The member states agree that a fundamental precept in Model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a CSP shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

D. The governing board may certify a CSP only if that CSP certifies that:

1. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
2. That personally identifiable information is only used and retained to the extent necessary for the administration of Model 1 with respect to exempt purchasers;
3. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the

information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the CSP;

4. Its collection, use and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

5. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

E. Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use and retention of personally identifiable information.

F. When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subsection (D)(4), such information shall no longer be retained by the member states.

G. When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

H. If anyone other than a member state, or a person authorized by that state's law or the Agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

I. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.

J. Each member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the Agreement does not enlarge or limit the member states' authority to:

1. Conduct audits or other review as provided under the Agreement and state law.

2. Provide records pursuant to a member state's Freedom of Information Act, disclosure laws with governmental agencies, or other regulations.

3. Prevent, consistent with state law, disclosures of confidential taxpayer information.

4. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service.

5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

K. This privacy policy does not preclude the governing board from certifying a CSP whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the Agreement.

Section 322: SALES TAX HOLIDAYS

A. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:

1. Not apply an exemption after December 31, 2004, unless the items to be exempted are specifically defined in the Agreement and the exemptions are uniformly applied to state and local sales and use taxes.

2. Provide notice of the exemption period at least sixty days' prior to the first day of the calendar quarter in which the exemption period will begin.

B. A member state may establish a sales tax holiday that utilizes price thresholds set by such state and the provisions of the Agreement on the use of thresholds shall not apply to exemptions provided by a state during a sales tax holiday. In order to provide uniformity, a price threshold established by a member state for exempt items shall include only items priced below the threshold. A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday.

C. The following procedures are to be used by member states in administering a sales tax holiday exemption:

1. Layaway sales - A sale of eligible property under a layaway sale qualifies for exemption if:

a. final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or

b. the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

2. Bundled sales - Member states will follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.

3. Coupons and discounts - A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.

4. Splitting of items normally sold together - Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, a pair of shoes cannot have each shoe sold separately so that the sales price of each shoe is within a sales tax holiday price threshold.

5. Rain checks - A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.

6. Exchanges - The procedure for an exchange in regards to a sales tax holiday is as follows:

a. If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.

b. If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.

c. If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

7. Delivery charges - Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property unless a member state defines "sales price" to exclude such charges. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property (including an eligible item with a sales price in excess of the price threshold), the seller should allocate the delivery charge by using:

a. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

b. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.

8. Order date and back orders - For the purpose of a sales tax holiday, eligible property qualifies for exemption if:

   a. the item is both delivered to and paid for by the customer during the exemption period; or

   b. the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

9. Returns - For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

10. Different time zones - The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

Section 323: CAPS AND THRESHOLDS

A. Each member state shall:

1. Not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. A member state may continue to have caps and thresholds until that date.
2. Not have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.

B. Each member state that has local jurisdictions that levy a sales or use tax shall not place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. A member state may continue to have caps and thresholds until that date.

C. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances where the burden of administration has been shifted from the retailer.

Section 324: ROUNDING RULE

A. After December 31, 2005, each member state shall adopt a rounding algorithm that meets the following criteria:

1. Tax computation must be carried to the third decimal place, and
2. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

B. Each state shall allow sellers to elect to compute the tax due on a transaction on an item or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state and local taxes. No member state shall require a seller to collect tax based on a bracket system.

Section 325: CUSTOMER REFUND PROCEDURES

A. These customer refund procedures are provided to apply when a state allows a purchaser to seek a return of over-collected sales or use taxes from the seller.

B. Nothing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.

C. These customer refund procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

D. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller: i) uses either a provider or a system, including a proprietary system, that is certified by the state; and ii) has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

Section 326: DIRECT PAY PERMITS

Each member state shall provide for a direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit will make a determination of the taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each state can set its own limits and requirements for the direct pay permit. The governing board shall advise member states when setting state direct pay limits and requirements, and shall consider use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI Audit and Legal Issues for Tax Administration.

Section 327: LIBRARY OF DEFINITIONS

Each member state shall utilize common definitions as provided in this section. The terms defined are set out in the Library of Definitions, in Appendix C of this Agreement. A member state shall adhere to the following principles:

A. If a term defined in the Library of Definitions appears in a member state's sales and use tax statutes or administrative rules or regulations, the member state shall enact or adopt the Library definition of the term in its statutes or administrative rules or regulations in substantially the same language as the Library definition.

B. A member state shall not use a Library definition in its sales or use tax statutes or administrative rules or regulations that is contrary to the meaning of the Library definition.

C. Except as specifically provided in Section 316 and the Library of Definitions, a member state shall impose a sales or use tax on all products or services included within each definition or exempt from sales or use tax all products or services within each definition.

Section 328: TAXABILITY MATRIX

A. To ensure uniform application of terms defined in the Library of Definitions each member state shall complete a taxability matrix adopted by the governing board. The member state's entries in the matrix shall be provided and maintained in a database that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.

B. A member state shall relieve sellers and CSPs from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by the member state in the taxability matrix.

Section 329: EFFECTIVE DATE FOR RATE CHANGES

Each member state shall provide that the effective date of rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows:

A. For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date.

B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

Section 330: BUNDLED TRANSACTIONS (Effective on and after January 1, 2008)

A. A member state shall adopt and utilize to determine tax treatment, the core definition for a "bundled transaction" in Appendix C, Part I of the Library of Definitions in the Agreement.

B. Member states are not restricted in their tax treatment of bundled transactions except as otherwise provided in the Agreement. Member states are not restricted in their ability to treat some bundled transactions differently from other bundled transactions.

C. In the case of a bundled transaction that includes any of the following: telecommunication service, ancillary service, internet access, or audio or video programming service:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

3. The provisions of this section shall apply unless otherwise provided by federal law.

Compiler's note: Section 330 was added on April 16, 2005. Member States shall comply with the provisions of this Section no later than January 1, 2008.

ARTICLE IV
SELLER REGISTRATION

Section 401: SELLER PARTICIPATION

A. The member states shall provide an online registration system that will allow sellers to register in all the member states.

B. By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into the member states, including member states joining after the seller's registration. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.

C. In member states where the seller has a requirement to register prior to registering under the Agreement, the seller may be required to provide additional information to complete the registration process or the seller may choose to register directly with those states.

D. A member state or a state that has withdrawn or been expelled shall not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has nexus with that state for any tax at any time.

Section 402: AMNESTY FOR REGISTRATION

A. Subject to the limitations in this section:

1. A member state shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the Agreement, provided that the seller was not so registered in that state in the twelve-month period preceding the effective date of the state's participation in the Agreement.

2. The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the state, provided registration occurs within twelve months of the effective date of the state's participation in the Agreement.

3. Amnesty similarly shall be provided by any additional state that joins the Agreement after the seller has registered.

B. The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

C. The amnesty is not available for sales or use taxes already paid or remitted to the state or to taxes collected by the seller.

D. The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. Each member state shall toll its statute of limitations applicable to asserting a tax liability during this thirty-six month period.

E. The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

F. A member state may allow amnesty on terms and conditions more favorable to a seller than the terms required by this section.

Section 403: METHOD OF REMITTANCE

When registering, the seller may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

A. MODEL 1, wherein a seller selects a CSP as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.

B. MODEL 2, wherein a seller selects a CAS to use which calculates the amount of tax due on a transaction.

C. MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.

Section 404: REGISTRATION BY AN AGENT

A seller may be registered by an agent. Such appointment shall be in writing and submitted to a member state if requested by the member state.

ARTICLE V
PROVIDER AND SYSTEM CERTIFICATION

Section 501: CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS

A. The governing board shall certify automated systems and service providers to aid in the administration of sale and use tax collections.

B. The governing board may certify a person as a CSP if the person meets all of the following requirements:

1. The person uses a CAS;
2. The person integrates its CAS with the system of a seller for whom the person collects tax so that the tax due on a sale is determined at the time of the sale;
3. The person agrees to remit the taxes it collects at the time and in the manner specified by the member states;
4. The person agrees to file returns on behalf of the sellers for whom it collects tax;
5. The person agrees to protect the privacy of tax information it obtains in accordance with Section 321 of the Agreement; and
6. The person enters into a contract with the member states and agrees to comply with the terms of the contract.

C. The governing board may certify a software program as a CAS if the governing board determines that the program meets all of the following requirements:

1. It determines the applicable state and local sales and use tax rate for a transaction, in accordance with Sections 309 to 315, inclusive;
2. It determines whether or not an item is exempt from tax;
3. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
4. It can generate reports and returns as required by the governing board; and
5. It can meet any other requirement set by the governing board.

D. The governing board may establish one or more sales tax performance standards for Model 3 sellers that meet the eligibility criteria set by the governing board and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

Section 502: STATE REVIEW AND APPROVAL OF CERTIFIED AUTOMATED SYSTEM SOFTWARE AND CERTAIN LIABILITY RELIEF (Effective on and after January 1, 2008)

A. Each member state shall review software submitted to the governing board for certification as a CAS under Section 501. Such review shall include a review to determine that the program adequately classifies the state's product-based exemptions. Upon completion of the review, the state shall certify to the governing board its acceptance of the classifications made by the system.

B. Each member state shall relieve CSPs and model 2 sellers from liability to the member state and local jurisdictions for not collecting sales or use taxes resulting from the CSP or model 2 seller relying on the certification provided by the member state.

C. Each member state shall provide relief from liability to CSPs for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of section 317.

D. The governing board and the member states shall not be responsible for classification of an item or transaction within the product-based exemptions certified. The relief from liability provided in this section shall not be available for a CSP or model 2 seller that has incorrectly classified an item or transaction into a product-based exemption certified by a member state. This paragraph shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.

E. If a member state determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the CSP or model 2 seller of the incorrect classification. The CSP or model 2 seller shall have ten (10) days to revise the classification after receipt of notice from the member state of the determination. Upon expiration of the ten (10) days, CSP or model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

Compiler's note: Section 502 was added on January 13, 2006. Member States shall comply with the provisions of this Section no later than January 1, 2008.

ARTICLE VI

MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES TAX COLLECTION

Section 601: MONETARY ALLOWANCE UNDER MODEL 1

A. Each member state shall provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract between the governing board and the CSP. The details of the monetary allowance will be provided through the contract process. The governing board shall require that such allowance be funded entirely from money collected in Model 1.

B. The contract between the governing board and a CSP may base the monetary allowance to a CSP on one or more of the following:

  1. A base rate that applies to taxable transactions processed by the CSP.
  2. For a period not to exceed twenty-four months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

Section 602: MONETARY ALLOWANCE FOR MODEL 2 SELLERS

The member states initially anticipate that they will provide a monetary allowance to sellers under Model 2 based on the following:

A. All sellers shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by a seller. The base rate will be set after the base rate has been established for Model 1. This allowance will be in addition to any discount afforded by each member state at the time.

B. The member states anticipate a monetary allowance to a Model 2 Seller based on the following:

  1. For a period not to exceed twenty-four months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax

revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

2. Following the conclusion of the twenty-four month period, a seller will only be entitled to a vendor discount afforded under each member state's law at the time the base rate expires.

Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER SELLERS THAT ARE NOT UNDER MODELS 1 OR 2

The member states anticipate that they will provide a monetary allowance to sellers under Model 3 and to all other sellers that are not under Models 1 or 2 based on the following:

A. For a period not to exceed twenty-four months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

B. Vendor discounts afforded under each member state's law.

ARTICLE VII
AGREEMENT ORGANIZATION

Section 701: EFFECTIVE DATE

The Agreement shall become binding and take effect when at least ten states comprising at least twenty percent of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have either been found to be in compliance with the requirements of the Agreement pursuant to Section 805 or have been found to be an associate member pursuant to Section 704. The Agreement shall take effect on the first day of a calendar quarter at least sixty days after the tenth state is found in compliance or is found to be an associate member.

Compiler's note: On April 16, 2005 Section 701 was amended by inserting "either" after "and have" in the first sentence; inserting "or have been found to be an associate member pursuant to Section 704" at the end of the first sentence; and deleting ", but cannot take effect prior to July 1, 2003" and inserting "or is found to be an associate member" at the end of the second sentence. The April 16, 2005 amendments to this section were effective upon adoption.

Section 702: APPROVAL OF INITIAL STATES

Prior to the effective date of the Agreement, a state may seek membership by forwarding a petition for membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing States. The certificate of compliance shall meet the requirements of Section 802. If some changes to a state's statutes, rules, regulations, or other authorities have been adopted, but are not yet in effect, the petition for membership shall include the date on which those changes will be effective. A petitioning state shall also provide a copy of its petition for membership and certificate of compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site.

Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. The meeting shall be convened as soon as practicable after receipt of the requisite number of petitions provided in Section 701. An affirmative vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.

The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

Compiler's note: On April 16, 2005 this section was amended by deleting "that has adopted changes to its statutes, rules, regulations, or other authorities necessary to bring a state into compliance as provided in Section 805," after "a state" in the first sentence; inserting the second sentence; inserting "to a state's statutes, rules, regulations, or other authorities" after "changes" in the third sentence; and deleting ", but shall not be earlier than the date the relevant statutes, rules, regulations, or other authorities of the requisite number of petitioning states are effective" after "Section 701" in the second sentence in the second paragraph. The April 16, 2005 amendments to this section were effective upon adoption.

Section 703:   STREAMLINED SALES TAX IMPLEMENTING STATES

A. From the time of ratification of this Agreement until the provisions of Section 701 have been met, the Streamlined Sales Tax Implementing States shall maintain responsibility for the Agreement, including the disposition of all proposed amendments to the Agreement. If the provisions of Section 701 have been met with the use of associate members as defined in Section 704, the Streamlined Sales Tax Implementing States shall be responsible for the disposition of all proposed amendments to and interpretations of the Agreement until such time as the provisions of Section 701 have been met without the use of associate members.

B. Amendments to the Agreement considered by the Streamlined Sales Tax Implementing States shall follow the provisions as set forth in Article IX, Section 901.

C. For a period of not less than six months nor longer than one year after the provisions of Section 701 are met without the use of associate members, the Streamlined Sales Tax Implementing States shall provide advice to the Governing Board of the Agreement and shall be consulted by the Governing Board before amending the Agreement.

Compiler's note: On April 16, 2005 Section 703 was amended by inserting the second sentence in 703 (A) and inserting "without the use of associate members" after "are met" in 703 (C). The April 16, 2005 amendments to this section were effective upon adoption.

Section 704: CONSIDERATION OF PETITIONS

A. A petitioning state that is found to be in compliance pursuant to Section 805 of the Agreement and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are in effect shall be designated a Member State.

B. A petitioning state that is found to be in compliance pursuant to Section 805 of the Agreement and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008, shall be designated an associate member. Provided the statutes, rules, regulations or other authorities remain in effect, the state shall automatically become a Member State upon the effective date of the conforming legislation.

C. A petitioning state that fails to receive an affirmative vote of three-fourths of the petitioning states as required under Section 702 may request associate membership. If such a request is made, the Petitioning States may grant such membership by majority vote upon a finding that the state has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision as required by Section 805, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008. A state that is granted associate membership by this section shall be required to re-petition for full membership under the requirements of the Agreement.

Compiler's note: On April 16, 2005 Section 704 was added and was effective upon adoption.

Section 705: ASSOCIATE MEMBERSHIP

A. An associate member shall have all the rights and privileges of a member state except that an associate member may not vote on amendments to or interpretations of the Agreement when the provisions of Section 701 have been met without the use of associate members. Associate members may vote on amendments to or interpretations of the Agreement as an Implementing State under Section 703 (A).

B. An associate member shall retain such status until the Governing Board finds such state to be in compliance pursuant to Section 805 or December 31, 2007, whichever is earlier, without regard to whether the population requirement of Section 701 has been met. Any associate member that has not been found in compliance by December 31, 2007 shall forfeit its status as an associate member. No state may be an associate member after December 31, 2007. The Co-Chairs of the Streamlined Sales Tax Implementing States shall provide an associate member state with the reasons why such state is not in compliance with the Agreement.

C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such taxes under applicable law. Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in an associate member state is not required to collect tax in any other associate member state. An associate member shall be responsible for payment of costs as provided in Article VI for those sellers that volunteer to collect tax in an associate member state.

D. Neither the Governing Board nor a member state may share or grant access to an associate member state any seller information from the seller's registration pursuant to Section 401. Neither the Governing Board nor a member state may share or grant access to an associate member state any seller information from an audit conducted by the Governing Board or a member state on behalf of the Governing Board unless the associate member state is a party to the audit.

E. An associate member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the Streamlined Sales Tax Implementing States or Governing Board.

F. An associate member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the associate member status is attained until 12 months after the associate member state has been found to be in compliance with the Agreement.

Compiler's note: On April 16, 2005 Section 705 was added and was effective upon adoption.

ARTICLE VIII
STATE ENTRY AND WITHDRAWAL

Section 801: ENTRY INTO AGREEMENT

After the effective date of the Agreement, a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. The petition for membership shall include such state's proposed date of entry. The petitioning state's proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective.

The petitioning state shall provide a copy of its petition for membership and the certificate of compliance to each member state when the petitioning state submits its petition for membership to the governing board. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site.

Section 802: CERTIFICATE OF COMPLIANCE

The certificate of compliance shall be signed by the chief executive of the state's tax agency. The certificate of compliance shall document compliance with the provisions of the Agreement and cite applicable statutes, rules, regulations, or other authorities evidencing such compliance.

Section 803: ANNUAL RE-CERTIFICATION OF MEMBER STATES

Each member state shall annually re-certify that such state is in compliance with the Agreement. Each member state shall make a re-certification to the governing board on or before August 1 of each year after the year of the state's entry. In its annual re-certification, the state shall include any changes in its statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the Agreement. The re-certification shall be signed by the chief executive of the state's tax agency.

A member state that cannot re-certify its compliance with the Agreement shall submit a statement of non-compliance to the governing board. The statement of non-compliance shall include any action or decision that takes such state out of compliance with the Agreement and the steps it will take to return to compliance. The governing board shall promulgate rules and procedures to respond to statements of noncompliance in accordance with Section 809.

Each member state shall post its annual re-certification or statement of non-compliance on that state's web site.

Section 804: REQUIREMENTS FOR MEMBERSHIP APPROVAL

The governing board shall determine if a petitioning state is in compliance with the Agreement. A three-fourths vote of the entire governing board is required to approve a state's petition for membership. The governing board shall provide public notice and opportunity for comment prior to voting on a state's petition for membership. A state's membership is effective on the proposed date of entry in its petition for membership or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least sixty days after its petition is approved.

Section 805: COMPLIANCE

A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.

Section 806: AGREEMENT ADMINISTRATION

Authority to administer the Agreement shall rest with the governing board comprised of representatives of each member state. Each member state may appoint up to four representatives to the governing board. The representatives shall be members of the executive or legislative branches of the state. Each member state shall be entitled to one vote on the governing board. Except as otherwise provided in the Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of the governing board present and voting. The governing board shall determine its meeting schedule, but shall meet at least once annually. The governing board shall provide a public comment period at each meeting to provide members of the public an opportunity to address the board on matters relevant to the administration or operation of the Agreement. The governing board shall provide public notice of its meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules establishing the public notice requirements for holding emergency meetings on less than thirty day's notice. The governing board may meet electronically.

The governing board is responsible for the administration and operation of the Agreement, including the appointment of all manner of committees. The governing board may employ staff, advisors, consultants or agents. The governing board may promulgate rules and procedures it deems necessary to carry out its responsibilities. The governing board may take any action that is necessary and proper to fulfill the purposes of the Agreement. The governing board may allocate the cost of administration of the Agreement among the member states.

The governing board may assign committees certain duties, including, but not limited to:

A. Responding to questions regarding the administration of the Agreement;
B. Preparing certification requirements and coordinating the certification process for CSPs;
C. Coordinating joint audits;
D. Issuing requests for proposals;
E. Coordinating contracts with member states and providers; and
F. Maintaining records for the governing board.

Section 807: OPEN MEETINGS

Each meeting of the governing board and the minutes thereof shall be open to the public except as provided herein. Meetings of the governing board may be closed only for one or more of the following:

A. Personnel issues.
B. Information required by the laws of any member state to be protected from public disclosure. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.
C. Proprietary information requested by any business to be protected from disclosure.

D. The consideration of issues incident to competitive bidding, requests for information, or certification, the disclosure of which would defeat the public interest in a fair and competitive process.

E. The consideration of pending litigation in a member state the discussion of which in a public session would, in the judgment of the member state engaged in the litigation, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

F. The consideration of pending litigation in which the governing board is a party the discussion of which in a public session would, in the judgment of the governing board, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

A closed session of the governing board may be convened by the chair or by a majority vote of the governing board. When a closed session is convened, the reason for the closed session shall be noted in a public session. Any actions taken in the closed session shall be reported immediately upon the reconvening of a public session.

Compiler's note: On April 16, 2005 Section 807 (F) was added and was effective upon its adoption.

Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER

With respect to each member state, the Agreement shall continue in full force and effect until a member state withdraws its membership or is expelled. A member state's withdrawal or expulsion cannot be effective until the first day of a calendar quarter after a minimum of sixty days' notice. A member state shall submit notice of its intent to withdraw from the Agreement to the governing board and the chief executive of each member state's tax agency. The member state shall provide public notice of its intent to withdraw and post its notice of intent to withdraw on its web site. The withdrawal by or expulsion of a state does not affect the validity of the Agreement among other member states. A state that withdraws or is expelled from the Agreement remains liable for its share of any financial or contractual obligations that were incurred by the governing board prior to the effective date of that state's withdrawal or expulsion. The appropriate share of any financial or contractual obligation shall be determined by the state and the governing board in good faith based on the relative benefits received and burdens incurred by the parties.

Section 809: SANCTION OF MEMBER STATES

If a member state is found to be out of compliance with the Agreement, the governing board may consider sanctions against the state. The sanctions that the governing board may impose include expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of a resolution to sanction a member state for noncompliance with the Agreement shall require the affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of the resolution. The member state that is the subject of the resolution shall not vote on such resolution. Resolutions seeking sanctions shall be acted upon by the governing board within a reasonable period of time as set forth in the governing board's rules. The governing board shall provide an opportunity for public comment prior to action on a proposed sanction.

Section 810: STATE AND LOCAL ADVISORY COUNCIL

The governing board shall create a State and Local Government Advisory Council to advise the governing board on matters pertaining to the administration of the Agreement. The membership shall include at least one representative from each state that is a participating member of the Streamlined Sales Tax Project pursuant to the Operating Rules of the Project as designated by that state. In addition, the governing board shall appoint local government officials to the State and Local Government Advisory Council. The governing board may appoint other state officials as it deems appropriate. Matters pertaining to the administration of the Agreement shall include, but not be limited to, admission of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement. The State and Local Government Advisory Council shall advise and assist the Business Advisory Council in the functions noted in Section 811.

Compiler's note: On April 16, 2005 Section 810 was amended by deleting "and Taxpayer" after "Business" in the last sentence. The amendment to this section was effective upon its adoption.

Section 811: BUSINESS ADVISORY COUNCIL

The governing board shall recognize a Business Advisory Council from the private sector to advise the governing board on matters pertaining to the administration of the Agreement. These matters shall include, but not be limited to, admission of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement. The Business Advisory Council shall advise and assist the State and Local Government Advisory Council in the functions noted in Section 810.

Compiler's note: On April 16, 2005 Section 811 was amended by deleting "AND TAXPAYER" from the title line; deleting "create" and inserting "recognize" after "shall" in the first sentence and deleting "and Taxpayer" after "Business" from the first and third sentences. The amendments to this section were effective upon its adoption.

ARTICLE IX
AMENDMENTS AND INTERPRETATIONS

Section 901: AMENDMENTS TO AGREEMENT

Amendments to the Agreement may be brought before the governing board by any member state. The Agreement may be amended by a three-fourths vote of the entire governing board. The governing board shall give the Governor and presiding officer of each house of each member state notice of proposed amendments to the Agreement at least sixty days prior to consideration. The governing board shall give public notice of proposed amendments to the Agreement at least sixty days prior to consideration. The governing board shall provide an opportunity for public comment prior to action on an amendment to the Agreement.

Section 902: INTERPRETATIONS OF AGREEMENT

Matters involving interpretation of the Agreement may be brought before the governing board by any member state or by any other person. All interpretations shall require a three-fourths vote of the entire governing board. The governing board shall publish all interpretations issued under this section. Interpretations shall be considered part of the Agreement and shall have the same effect as the Agreement. The governing board shall act on requests for interpretation of the Agreement within a reasonable period of time and under guidelines and procedures as set forth in the governing board's rules. The governing board may determine that it will not issue an interpretation. The governing board shall provide an opportunity for public comment prior to issuing an interpretation of the Agreement.

Section 903: DEFINITION REQUESTS

Any member state or any other person may make requests for additional definitions or for interpretations on how an individual product or service fits within a definition. Requests shall be submitted in writing as determined by the governing board. Such requests shall be referred to the Advisory Council created in Section 810 or other group under guidelines and procedures as set forth in the governing board's rules. The entity to which the request was referred shall post notice of the request and provide for input from the public and the member states as directed by the governing board. Within one hundred eighty days after receiving the request, they shall report to the governing board one of the following recommendations:

A. That no action be taken on the request;

B. That a proposed amendment to the Library be submitted;

C. That an interpretation request be submitted; or

D. That additional time is needed to review the request.

If either an amendment or an interpretation is recommended, the entity to which the request was referred shall provide the appropriate language as required by the governing board. The governing board shall take action on the recommendation of the entity to which the request was referred at the next meeting of the governing board pursuant to the notice requirements of Section 806. Action by the governing board to approve a recommendation for no action shall be considered the final disposition of the request. Nothing in this paragraph shall prohibit a state from directly submitting a proposed amendment or an interpretation request to the governing board pursuant to Section 901 or Section 902.

ARTICLE X
ISSUE RESOLUTION PROCESS

Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION

The governing board shall promulgate rules creating an issue resolution process. The rules shall govern the conduct of the process, including the participation by any petitioner, affected state, and other interested party, the disposition of a petition to invoke the process, the allocation of costs for participating in the process, the possible involvement of a neutral third party or non-binding arbitration, and such further details as the governing board determines necessary and appropriate.

Section 1002: PETITION FOR RESOLUTION

Any member state or person may petition the governing board to invoke the issue resolution process to resolve matters of:

A. Membership of a state under Article VIII;

B. Matters of compliance under Section 805;

C. Possibilities of sanctions of a member state under Section 809;

D. Amendments to the Agreement under Section 901;

E. Interpretation issues, including differing interpretations among the member states, under Section 902; or

F. Other matters at the discretion of the governing board.

Section 1003: FINAL DECISION OF GOVERNING BOARD

The governing board shall consider any recommendations resulting from the issue resolution process before making its decision, which decision shall, as with all other matters under the Agreement, be final and not subject to further review.

Section 1004: LIMITED SCOPE OF THIS ARTICLE

Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or otherwise affect, in any manner, any right or duty that any person or governmental body has under the laws of any member state or local government body. This Article is specifically subject to the terms of Article XI and shall not be construed as taking precedence over Article XI.

ARTICLE XI

RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

Section 1101: COOPERATING SOVEREIGNS

This Agreement is among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Section 1102: RELATIONSHIP TO STATE LAW

No provision of the Agreement in whole or part invalidates or amends any provision of the law of a member state. Adoption of the Agreement by a member state does not amend or modify any law of the state. Implementation of any condition of the Agreement in a member state, whether adopted before, at, or after membership of a state, must be by the action of the member state. All member states remain subject to Article VIII.

Section 1103: LIMITED BINDING AND BENEFICIAL EFFECT

A. This Agreement binds and inures only to the benefit of the member states. No person, other than a member state, is an intended beneficiary of this Agreement. Any benefit to a person other than a state is established by the laws of the member states and not by the terms of this Agreement.

B. Consistent with subsection (A), no person shall have any cause of action or defense under the Agreement or by virtue of a member state's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of any member state, or any political subdivision of a member state on the ground that the action or inaction is inconsistent with the Agreement.

C. No law of a member state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

Section 1104: FINAL DETERMINATIONS

The determinations pertaining to the Agreement that are made by the member states are final when rendered and are not subject to any protest, appeal, or review.

ARTICLE XII

REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

Section 1201: REVIEW OF COSTS AND BENEFITS

The governing board will review costs and benefits of administration and collection of sales and use taxes incurred by states and sellers under the existing sales and use tax laws at the time of adoption of the Agreement and the proposed Streamlined Sales Tax Agreement.

APPENDIX A

STREAMLINED SALES AND USE TAX AGREEMENT

PETITION FOR MEMBERSHIP

WHEREAS, it is in the interest of the private sector and of state and local governments to simplify and modernize sales and use tax administration;

WHEREAS, such simplification and modernization will result in a substantial reduction in the costs and complexity for sellers of personal property and services in conducting their commercial enterprises;

WHEREAS, such simplification and modernization will also result in additional voluntary compliance with the sales and use tax laws;

WHEREAS, such simplification and modernization of sales and use tax administration is best conducted in cooperation and coordination with other states; and

WHEREAS, the State of ___________________ levies a sales tax and levies a use tax. "Sales tax" means the tax levied under (CITE SPECIFIC STATUTE) and "use tax" means the tax levied under (CITE SPECIFIC STATUTE).

NOW, the undersigned representative hereby petitions the governing board of the Streamlined Sales and Use Tax Agreement (or Co-Chairs of the Streamlined Sales Tax Implementing States) for membership into the Agreement.

____

NAME

____

TITLE

STATE OF ______________________

Appendix B

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Appendix C

LIBRARY OF DEFINITIONS

Part I Administrative definitions including tangible personal property. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes.

Part II Product definitions. Terms included in this Part are used to exempt items from sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes these items.

Part III Sales tax holiday definitions. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes during sales tax holidays.

PART I

Administrative Definitions

A **"bundled transaction"** is 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. A "bundled transaction" does not include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

"Distinct and identifiable products" does not include:

1. Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the "retail sale" of the products and are incidental or immaterial to the "retail sale" thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.

2. A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the "sales price" of the product purchased does not vary depending on the inclusion of the product "provided free of charge."

3. Items included in the member state's definition of "sales price," pursuant to Appendix C of the Agreement.

The term "one non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

A transaction that otherwise meets the definition of a "bundled transaction" as defined above, is not a "bundled transaction" if it is:

The "retail sale" of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

The "retail sale" of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

A transaction that includes taxable products and nontaxable products and the "purchase price" or "sales price" of the taxable products is de minimis.

De minimis means the seller's "purchase price" or "sales price" of the taxable products is ten percent (10%) or less of the total "purchase price" or "sales price" of the bundled products. Sellers shall use either the "purchase price" or the "sales price" of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the "purchase price" and "sales price" of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

4. The "retail sale" of exempt tangible personal property and taxable tangible personal property where:

the transaction includes “food and food ingredients”, “drugs”, “durable medical equipment”, “mobility enhancing equipment”, “over-the-counter drugs”, “prosthetic devices” (all as defined in Appendix C) or medical supplies; and

where the seller's “purchase price” or “sales price” of the taxable tangible personal property is fifty percent (50%) or less of the total “purchase price” or “sales price” of the bundled tangible personal property. Sellers may not use a combination of the “purchase price” and “sales price” of the tangible personal property when making the fifty percent (50%) determination for a transaction.

Compiler’s note: On April 16, 2005 the definition of a” bundled transaction” was added. Member States shall comply with this definition no later than January 1, 2008.

“Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

A member state may exclude from “delivery charges” the charges for delivery of “direct mail” if the charges are separately stated on an invoice or similar billing document given to the purchaser.

If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

a. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
b. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

“**Direct mail**” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

"Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

A. Lease or rental does not include:

1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
2. A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or
3. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property.

B. Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).

C. This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the [state commercial code], or other provisions of federal, state or local law.

D. This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals. This definition shall neither impact any existing sale-leaseback exemption or exclusions that a state may have, nor preclude a state from adopting a sale-leaseback exemption or exclusion after the effective date of the Agreement.

“Purchase price” applies to the measure subject to use tax and has the same meaning as sales price.

“**Retail sale or Sale at retail**” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

“**Sales price**”**(Effective through December 31, 2007)** 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;

F. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

G. Credit for any trade-in, as determined by state law.

States may exclude from “sales price” the amounts received for charges included in paragraphs (C) through (G) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser.

“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**" **(Effective on and after January 1, 2008)** 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.

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 (B) 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.

Compiler's note: On April 16, 2005 the following amendments were made to the definition of "Sales Price".
Deleting "F. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;" and renumbering "G" to "F".
Changing the cross reference to reflect the renumbering, inserting the second and third sentences in the paragraph following (F), and inserting the definition of "telecommunications nonrecurring charges".
Inserting all of the material starting with "Sales price" shall include consideration received by the seller from third parties".
Member states shall comply with the changes to this definition no later than January 1, 2008.

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

PART II

Product Definitions

CLOTHING

"Clothing" means all human wearing apparel suitable for general use. The following list contains examples and is not intended to be an all-inclusive list.

A. "Clothing" shall include:

1. Aprons, household and shop;
2. Athletic supporters;
3. Baby receiving blankets;

4. Bathing suits and caps;
5. Beach capes and coats;
6. Belts and suspenders;
7. Boots;
8. Coats and jackets;
9. Costumes;
10. Diapers, children and adult, including disposable diapers;
11. Ear muffs;
12. Footlets;
13. Formal wear;
14. Garters and garter belts;
15. Girdles;
16. Gloves and mittens for general use;
17. Hats and caps;
18. Hosiery;
19. Insoles for shoes;
20. Lab coats;
21. Neckties;
22. Overshoes;
23. Pantyhose;
24. Rainwear;
25. Rubber pants;
26. Sandals;
27. Scarves;
28. Shoes and shoe laces;
29. Slippers;
30. Sneakers;
31. Socks and stockings;
32. Steel toed shoes;
33. Underwear;

34. Uniforms, athletic and non-athletic; and

35. Wedding apparel.

B. "Clothing" shall not include:

1. Belt buckles sold separately;
2. Costume masks sold separately;
3. Patches and emblems sold separately;
4. Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and
5. Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

"Clothing accessories or equipment" means incidental items worn on the person or in conjunction with "clothing." "Clothing accessories or equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing," "sport or recreational equipment," and "protective equipment." The following list contains examples and is not intended to be an all-inclusive list. "Clothing accessories or equipment" shall include:

A. Briefcases;
B. Cosmetics;
C. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
D. Handbags;
E. Handkerchiefs;
F. Jewelry;
G. Sun glasses, non-prescription;
H. Umbrellas;
I. Wallets;
J. Watches; and
K. Wigs and hair pieces.

"Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use. "Protective equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of “clothing,” “clothing accessories or equipment,” and “sport or recreational equipment.” The following list contains examples and is not intended to be an all-inclusive list. “Protective equipment” shall include:

A. Breathing masks;

B. Clean room apparel and equipment;

C. Ear and hearing protectors;

D. Face shields;

E. Hard hats;

F. Helmets;

G. Paint or dust respirators;

H. Protective gloves;

I. Safety glasses and goggles;

J. Safety belts;

K. Tool belts; and

L. Welders gloves and masks.

"Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. “Sport or recreational equipment” are mutually exclusive of and may be taxed differently than apparel within the definition of “clothing,” “clothing accessories or equipment,” and “protective equipment.” The following list contains examples and is not intended to be an all-inclusive list. “Sport or recreational equipment” shall include:

A. Ballet and tap shoes;

B. Cleated or spiked athletic shoes;

C. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;

D. Goggles;

E. Hand and elbow guards;

F. Life preservers and vests;

G. Mouth guards;

H. Roller and ice skates;

I. Shin guards;

J. Shoulder pads;

K. Ski boots;

L. Waders; and

M. Wetsuits and fins.

COMPUTER RELATED

"**Computer**" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

"Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

"Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

"**Electronic**" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

"Prewritten computer software" means "computer software," including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances "computer software" of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software;" provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."

A member state may exempt "prewritten computer software" "delivered electronically" or by "load and leave."

FOOD AND FOOD PRODUCTS

"**Alcoholic Beverages**" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

"Candy" means 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.

"Dietary supplement" means any product, other than "tobacco," intended to supplement the diet that:

A. Contains one or more of the following dietary ingredients:

1. A vitamin;
2. A mineral;
3. An herb or other botanical;
4. An amino acid;
5. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
6. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; andIs intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.

"**Food and food ingredients**" means 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. "Food and food ingredients" does not include "alcoholic beverages" or "tobacco." A member state may exclude "candy," "dietary supplements" and "soft drinks" from this definition, which items are mutually exclusive of each other. Notwithstanding the foregoing requirements of this definition or any other provision of the Agreement, a member state may maintain its tax treatment of food in a manner that differs from the definitions provided herein, provided its taxation or exemption of food is based on a prohibition or requirement of that state's Constitution that exists on the effective date of the Agreement.

"**Food sold through vending machines**" means food dispensed from a machine or other mechanical device that accepts payment.

"Prepared food" means:

A. Food sold in a heated state or heated by the seller;

B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or

C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

"Prepared food" in B does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

The following items may be taxed differently than "prepared food" and each other, if sold without eating utensils provided by the seller, but may not be taxed differently than the same item when classified under "food and food ingredients."

1. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
2. Food sold in an unheated state by weight or volume as a single item.
3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

Substances within “food and food ingredients” may be taxed differently if sold as “prepared food.” A state shall tax or exempt from taxation “candy,” dietary supplements,” and “soft drinks” that are sold as “prepared food” in the same manner as it treats other substances that are sold as “prepared food.”

“Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

“Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

HEALTH-CARE

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or

B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

C. Intended to affect the structure or any function of the body.

A member state may independently:

A. Limit the definition of “drug” to human use (as opposed to both human and animal use) in the administration of its exemption;

B. Draft its exemption for “drug” to specifically add insulin and/or medical oxygen so that no prescription is required, even if a state requires a prescription under its exemption for drugs;

C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and other medical facilities;

D. Determine the taxability of free samples of drugs; and

E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment of bundled transactions is not otherwise defined in the Agreement.

"Durable medical equipment" (Effective through December 31, 2007) means equipment including repair and replacement parts for same, but does not include "mobility enhancing equipment," which:

A. Can withstand repeated use; and

B. Is primarily and customarily used to serve a medical purpose; and

C. Generally is not useful to a person in the absence of illness or injury; and

D. Is not worn in or on the body.

A member state may limit its exemption to "durable medical equipment" used for home use only. A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements.

"Durable medical equipment" (Effective on and after January 1, 2008) means equipment including repair and replacement parts for same, but does not include "mobility enhancing equipment," which:

E. Can withstand repeated use; and

F. Is primarily and customarily used to serve a medical purpose; and

G. Generally is not useful to a person in the absence of illness or injury; and

H. Is not worn in or on the body.

A member state may limit its exemption to "durable medical equipment:"

A. By requiring a prescription;

B. Based on Medicare or Medicaid payments or reimbursement; or

C. For home use.

A member state may limit the exemption using any combination of the above but in no case shall an exemption certificate be required.

Compiler's note: On October 1, 2005 the durable medical equipment definition was amended by deleting: "~~A member state may limit its exemption to "durable medical equipment" used for home use only. A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements~~" after D and inserting:

"A member state may limit its exemption to "durable medical equipment:"

A. By requiring a prescription;

B. Based on Medicare or Medicaid payments or reimbursement; or

C. For home use.

A member state may limit the exemption using any combination of the above but in no case shall an exemption certificate be required."

Member states shall adopt and utilize this definition no later than January 1, 2008.

"Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of "over-the-counter-drugs."

"Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include "durable medical equipment," which:

A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and

B. Is not generally used by persons with normal mobility; and

C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements.

"Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. A member state may exclude "grooming and hygiene products" from this definition. The "over-the-counter-drug" label includes:

A. A "Drug Facts" panel; or

B. A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

"Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.

"Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:

A. Artificially replace a missing portion of the body;

B. Prevent or correct physical deformity or malfunction; or

C. Support a weak or deformed portion of the body.

A member state may exclude any or all of the following from the definition of "prosthetic device:"

A. Corrective eyeglasses;

B. Contact lenses;

C. Hearing aids; and

D. Dental prosthesis.

A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements.

TELECOMMUNICATIONS (Effective on and after January 1, 2008)

Tax Base/Exemption Terms

"Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services", including but not limited to "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".

"Conference bridging service" means an "ancillary service" that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include the "telecommunications services" used to reach the conference bridge.

"Detailed telecommunications billing service" means an "ancillary service" of separately stating information pertaining to individual calls on a customer's billing statement.

"Directory assistance" means an "ancillary service" of providing telephone number information, and/or address information.

"Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services", which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including "conference bridging services".

"Voice mail service" means an "ancillary service" that enables the customer to store, send or receive recorded messages. "Voice mail service" does not include any "vertical services" that the customer may be required to have in order to utilize the "voice mail service".

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. "Telecommunications service" does not include:

A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

B. Installation or maintenance of wiring or equipment on a customer's premises;

C. Tangible personal property;

D. Advertising, including but not limited to directory advertising.

E. Billing and collection services provided to third parties;

F. Internet access service;

G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

H. “Ancillary services”; or

I. Digital products “delivered electronically”, including but not limited to software, music, video, reading materials or ring tones.

“800 service” means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

“900 service” means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for: collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.

“Fixed wireless service” means a “telecommunications service” that provides radio communication between fixed points.

“Mobile wireless service” means a “telecommunications service” that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, “telecommunications services” that are provided by a commercial mobile radio service provider.

“Paging service” means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

“**Prepaid calling service”** means the right to access exclusively “telecommunications services”, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

“Prepaid wireless calling service” means a “telecommunications service” that provides the right to utilize “mobile wireless service” as well as other non-telecommunications services including the download of digital products “delivered electronically”, content and “ancillary services”, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

“Private communications service” means a “telecommunications service” that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

“Value-added non-voice data service” means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

Modifiers of Sales Tax Base/Exemption Terms

The following terms can be used to further delineate the type of “telecommunications service” to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

“Coin-operated telephone service” means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.

“International” means a “telecommunications service” that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

"Interstate" means a "telecommunications service" that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

"Intrastate" means a "telecommunications service" that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

"Pay telephone service" means a "telecommunications service" provided through any pay telephone.

"Residential telecommunications service" means a "telecommunications service" or "ancillary services" provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, "telecommunications service" is considered residential if it is provided to and paid for by an individual resident rather than the institution.

The terms "ancillary services" and "telecommunications service" are defined as a broad range of services. The terms "ancillary services" and "telecommunications service" are broader than the sum of the subcategories. Definitions of subcategories of "ancillary services" and "telecommunications service" can be used by a member state alone or in combination with other subcategories to define a narrower tax base than the definitions of "ancillary services" and "telecommunications service" would imply. The subcategories can also be used by a member state to provide exemptions for certain subcategories of the more broadly defined terms.

A member state that specifically imposes tax on, or exempts from tax, local telephone or local telecommunications service may define "local service" in any manner in accordance with Section 327 of the Agreement, except as limited by other sections of this Agreement.

Compiler's note: On April 16, 2005 the telecommunications definitions were added to the Agreement. Member states shall adopt and utilize these definitions no later than January 1, 2008.

PART III

Sales Tax Holiday Definitions

The definitions in this Part are only applicable for the purpose of administration of a sales tax holiday, as defined in Section 322 (A).

"**Eligible property**" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in a member state.

"**Layaway sale**" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

"**Rain check**" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

"School supply" is an item commonly used by a student in a course of study. The term is mutually exclusive of the terms "school art supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list:

A. Binders;

B. Book bags;

C. Calculators;

D. Cellophane tape;

E. Blackboard chalk;

F. Compasses;

G. Composition books;

H. Crayons;

I. Erasers;

J. Folders; expandable, pocket, plastic, and manila;

K. Glue, paste, and paste sticks;

L. Highlighters;

M. Index cards;

N. Index card boxes;

O. Legal pads;

P. Lunch boxes;

Q. Markers;

R. Notebooks;

S. Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

T. Pencil boxes and other school supply boxes;

U. Pencil sharpeners;

V. Pencils;

W. Pens;

X. Protractors;

Y. Rulers;

Z. Scissors; and

AA. Writing tablets.

"School art supply" is an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms "school supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list:

A. Clay and glazes;

B. Paints; acrylic, tempora, and oil;

C. Paintbrushes for artwork;

D. Sketch and drawing pads; and

E. Watercolors.

"School instructional material" is written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms "school supply," "school art supply," and "school computer supply," and may be taxed differently. The following is an all-inclusive list:

A. Reference books;

B. Reference maps and globes;

C. Textbooks; and

D. Workbooks.

"School computer supply" is an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms "school supply," "school art supply," and "school instructional material," and may be taxed differently. The following is an all-inclusive list:

A. Computer storage media; diskettes, compact disks;

B. Handheld electronic schedulers, except devices that are cellular phones;

C. Personal digital assistants, except devices that are cellular phones;

D. Computer printers; and

E. Printer supplies for computers; printer paper, printer ink.