A motion by Wisconsin to amend section 317 relating to the administration of exemptions

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~~ 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. 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. 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. A member state may provide for a period longer than 90 days for the seller to obtain necessary information.

D. 1. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection (C) a member state shall provide the seller may, within with 120 days subsequent to a request for substantiation by a member state, to either: prove that the transaction was not subject to tax by other means or obtain

a. 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. which means that the seller obtain a certificate that claims an exemption that (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, (ii) could be applicable to the item being purchased, and (iii) is reasonable for the purchaser's type of business; or

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

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

2. If the seller obtains the information described in subsection D.1 of this section, the member state shall relieve the seller of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The state must establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

2. E. 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. F. Notwithstanding the aforementioned, each Each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for from a purchaser with which the seller has a recurring business relationship. States Notwithstanding the provisions of subsection E of this section, a member state 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

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