A motion by Ohio on behalf of SLAC creating Rules for Sales Tax Holiday Subscription sales and Periodic or Recurring Payments.

Rule 322 – Sales Tax Holidays

Rule 322.1 – Sales Tax Holiday — Subscriptions of Tangible Personal Property

Purpose: The purpose of this rule is to demonstrate how a sales tax holiday applies to subscriptions of tangible personal property.

The purchase of a subscription ~~may qualify~~ for a product that is tangible personal property qualifies for sales tax holiday treatment if the product is included and meets the qualifications required in the sales tax holiday and:

a. The product is delivered and paid for during the holiday period; or
b. The customer orders and pays for the product during the holiday and does not request delayed shipment of the product.

The following examples assume the state taxes the tangible personal property subscription described.

Example 1: A pet owner has a subscription for pet food from their favorite pet food supplier. Each month the supplier bills and ships pet food to the pet owner. The pet owner can cancel the order anytime up to the day of the scheduled shipment. The pet owner's state has an annual sales tax holiday on all tangible personal property, including pet food, during the month of July. The July subscription billing is exempt from sales tax under the sales tax holiday since the item purchased qualifies as exempt tangible personal property and the scheduled order and billing takes place during the sales tax holiday.

Example 2: A customer has a subscription for health and beauty products from a seller. Each month the seller bills and ships the products to the customer. The customer can cancel the order anytime up to the day of the scheduled shipment. The customer's state has an annual sales tax holiday on all tangible personal property, including health and beauty products, during the second week of August each year. The August subscription billing is the week prior to the August sales tax holiday week with scheduled shipment during the holiday week. Because the product is billed the week prior to the sales tax holiday, the subscription does not qualify for the sales tax holiday exemption.

Rule 322.2 - Sales Tax Holiday Periodic or Recurring Payments

Purpose: The purpose of this rule is to demonstrate when a periodic or recurring payment on a lease or rental qualifies for a sales tax holiday.

The lease or rental of tangible personal property that is subject to periodic or recurring payments is eligible for a sales tax holiday if:

a. The item is included in the state's sales tax holiday, and

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b. The customer is in possession of the item, or the item is delivered, or the item is set aside during the sales tax holiday period for immediate delivery, and
c. The lease or rental billing is within the sales tax holiday period. If the state accelerates the tax payment for the lease or rental and the tax billing is during the sales tax holiday, any sales tax holiday threshold in place applies to the total accelerated tax payment amount.

The following examples assume:

1. The state's sales tax holiday applies to all tangible personal property;
2. The state's sales tax holiday includes leases and rentals; and
3. The state taxes the lease or rental described.

Example 1: A customer signs a 12-month lease and takes possession of a laptop computer during the state's sales tax holiday on computers. The lease agreement requires monthly payments of $75 plus sales tax. The first lease payment is billed at the time the customer signs the lease agreement. The first lease billing meets the requirements to be an eligible recurring payment for the sales tax holiday and is not subject to the sales tax.

Example 2: A customer has a 12-month lease on a laptop computer that started 6 months ago. The lease agreement requires monthly payments of $100 plus sales tax. The lease billing for August falls during the state's sales tax holiday on computers. The August lease billing meets the requirements to be an eligible recurring payment for the sales tax holiday. No sales tax is due on this lease billing.

Example 3: A customer has a 12-month lease on a laptop computer that started 1 month ago. The lease agreement requires monthly payments of $50 plus sales tax. The lease billing for July falls the week after the state's three-day sales tax holiday on computers. Anticipating the July sales tax holiday the customer makes the July lease payment during the three-day sales tax holiday period which is a week prior to the July lease billing. The July payment does not meet the requirements to be an eligible recurring payment for the sales tax holiday because the billing does not occur during the three-day sales tax holiday period. Sales tax is due on this lease payment.

Example 4: A customer rents a table saw from the local hardware store. The rental costs $35 plus sales tax for 4 hours. The customer picks up the saw and returns it within a 4-hour period that is during the state's two-day all tangible personal property sales tax holiday. The customer pays for the rental when the saw is returned. The rental meets the requirements to be an eligible periodic payment for the sales tax holiday. No sales tax is due on the rental payment.

Example 5: A customer rents a scaffolding unit from an equipment rental dealer. The customer picks up the scaffolding unit during the state's one week all tangible personal property sales tax holiday. Billing for scaffolding rental will be done upon return of the unit.

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The customer returns the scaffolding a week later, after the state's sales tax holiday has ended. The customer is billed $80 for one week's rental. Sales tax is due on the rental because billing for the rental was outside of the sales tax holiday period.

Example 6: State Z has an annual four-day sales tax holiday every August that covers qualifying tangible personal property priced at $500 or less. State Z taxes leases upfront, meaning that all sales tax is due at the time of the first lease payment.

During the holiday, a customer enters into a six-month equipment lease totaling $350, with the first lease payment due during the holiday period. Because the lease amount is under the state threshold and all sales tax is applicable upfront, the sales tax on the $350 lease total qualifies for the holiday and no tax is owed on the subsequent lease payments.