Interpretation – Definition Request

Streamlined Sales Tax Governing Board, Inc.
100 Majestic Drive, Suite 400 ♦ Westby, WI 54667

The Compliance Review and Interpretation Committee will not act on a request if the request requires an amendment to the Agreement, Rules, or Appendices previously approved by the Governing Board. Such requests should be submitted to the State and Local Advisory Council for consideration.

Provide the name(s) and contact information of the state or parties submitting the Request.

Date Request is submitted: 6/1/2022

Name of Person(s) submitting request: Rees Linn, SALT Solutions

Contact Person: Rees Linn

Address: 14400 Metcalf Ave., Overland Park, KS 66223

Phone: 214-862-7503 **Email:** rlinn@saltsolutions.biz

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1. Agreement Section(s), Rules or Tax Administration Practice(s) involved:

SSUTA, App C, Part II - Health Care
SSUTA Sec. 327
SSUTA Sec. 316
CRIC IO 2006-05
CRIC IO 2007-01

2. Issue:

Whether the exclusions listed in Part II allow member states to limit their drug exemption to items that are dispensed or that contact a patient.

3. Statement of Background Facts (Provide a detailed description of the issue and supporting facts.):

All SSUTA member states allow sales and use tax exemptions for drugs. Most of these exemptions are limited by the specific language adopted by each legislature or by each tax administration agency. We believe that some member states have adopted policies that place limitations on their drug exemptions that are not allowed under SSUTA.

CRIC 2007-01 affirms that to meet the Part II definition of a "drug," an item need only meet one of the provisions in A, B, or C of the definition and be a compound, chemical or substance. The definition does not require the item to be internally consumed or externally applied to the patient. Nor does the definition require the item to be dispensed.

SSUTA Section 316(B)(3) says member states may enact product-based exemptions for all items included within a Part II definition but shall not exempt specific items included within the product definition unless the product definition sets out an exclusion for such item. In other words, for taxability purposes, an item that meets the definition of a drug must be treated the same as other drugs unless an allowable exclusion applies.

The question is whether the exclusions listed in Part II allow member states to limit their exemption to items that are dispensed or that contact a patient. Part II permits member states to independently:

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

G. 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;

H. Determine the taxability of the sales of drugs and prescription drugs to hospitals and other

medical facilities;

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

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

None of the permitted exclusions allow states to differentiate between drugs based on whether the item is dispensed or based on whether the item contacts a patient. The exclusion in "F" allows member states to differentiate between drugs for human use as opposed to drugs for animal use. The term "human use" in this context is not meant to convey that a drug must be dispensed or contact a patient.

The exclusion in "H" only allows member states to determine whether the drugs are exempt based on the type of medical facility purchasing the drugs. For instance, a member state may allow an exemption for prescription drugs purchased by hospitals but disallow the exemption for prescription drugs purchased by other medical facilities, such as nursing homes.

4. Proposed Interpretation:

The Part II definition for "drug" does not list an exclusion based on whether the item is dispensed or based on whether the item contacts a patient. We believe that statutes, regulations, or administrative policies that limit drug exemptions in such a manner conflict with SSUTA Section 316(B)(3).

5. Is expedited consideration requested? ☐ **NO** ☐ **YES** If yes, please explain: Click here to enter text.

A request for interpretation or definition normally requires a minimum 60-day comment period. The comment period may be shortened to 10 days if the Committee grants a request for expedited consideration. See Governing Board Rule 902(#) and (H).

Submit completed form to:

Craig Johnson, Executive Director
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Phone: 608-634-6160
www.streamlinedsalestax.org

Compliance Review and Interpretations Committee Meeting Schedule

The Compliance Review and Interpretations Committee meets by teleconference at 10:00 am central every other Thursday. Its schedule can be found at www.streamlinedsalestax.org under the meeting calendar.