

Approved February 20, 2001  
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on January 25, 2001 in Room 519-S of the Capitol.

All members were present except: Rep. Gilbert, excused  
Rep. Newton, excused

Committee staff present: Chris Courtwright, Legislative Research Department  
Don Hayward, Revisor  
Winnie Crapson, Secretary

Conferees appearing before the committee:  
Richard Cram, Director, Policy and Research, Dept. of Revenue

Others attending: See attached list.

Minutes for January 9, January 11, January 17 and January 18 were approved by unanimous vote.

Richard Cram, Director, Policy and Research, Department of Revenue, distributed the to the committee a report on "Sales and Use Tax and Taxation of Remote Sales" and "Current Status of Streamlined Sales Tax Project and the Pilot Project" (Attachment #1).

Mr. Cram presented explanations and responded to questions and comments from members of the committee.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is January 29..

GUEST LIST

DATE Jan. 25

NAME	REPRESENTING
Frances Kastner	Ks Food Dealers Assn
Richard Cream	KDoR
Janet Stubbs	KBIA
Tucker Poling	Intern-Huff
George Petersen	Ks Taxpayers Network
Martha Ann Smith	KMHHA
Morice Carpenter	KCCI
Ann Surkes	DOB
Dore Hathams	WK

Office of Policy & Research  
Richard L. Cram, Director  
915 SW Harrison St.  
Topeka, KS 66625



(785) 296-3041  
FAX (785) 296-7928  
Hearing Impaired TTY (785) 296-3909  
Internet Address: [www.ink.org/public/kdor](http://www.ink.org/public/kdor)

Office of Policy & Research

**To: Representative John Edmonds, Chair**  
**House Taxation Committee**

**From: Richard L. Cram**

**Re: Sales and Use Tax and Taxation of Remote Sales**  
**Current Status of Streamlined Sales Tax Project and the Pilot Project**

**Date: January 25, 2001**

**Sales and Use Tax**

The sales tax was first enacted in Kansas in 1937. It became a popular revenue-raising vehicle for many States during the Depression. This popularity has grown. Currently, 45 States have enacted the sales tax. Nationwide, sales tax is estimated to provide approximately a third of total State tax collections. Hellerstein & Hellerstein, *State Taxation*, ¶ 12.01. In Kansas, sales and use tax accounted for 41.7% of total Department of Revenue collections in FY 1999.

Sales tax is imposed on the gross receipts received from the retail sale of tangible personal property or certain taxable services. K.S.A. 79-3603. It is paid by the consumer. The retailer is obligated to collect the tax from the consumer at the time of the sale, and report and remit the tax to the State. K.S.A. 79-3604; 79-3607. If the retailer does not collect the sales tax from the consumer on a taxable sale, then the State can collect the tax from the retailer or the consumer. As a practical matter, in most situations, the State would collect unpaid sales tax from the retailer. Any retailer making taxable sales in the State must first register with the department. K.S.A. 79-3608.

Use tax is imposed on the use, storage or consumption of tangible personal property in the State. K.S.A. 79-3703. It applies to goods purchased outside the State. The use tax complements the sales tax. Use tax was developed to safeguard State sales tax revenues from erosion by purchases of goods outside the State, and to protect local merchants from loss of business to border and other States that either have no sales tax or whose sales tax rate is lower than that of the merchant's State. Hellerstein & Hellerstein, ¶ 16.01.

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## Taxation of Remote Sales

The purchaser is obligated to pay use tax to the State of residence on out-of-state purchases. Except for businesses subject to regular audits, unless the out-of-state retailer collects use tax from the purchaser and remits it to the State, as a practical matter, it will not be paid. The viability of both the sales and use tax depends primarily upon the collection, reporting and remittance functions that retailers perform. In order for States to obtain an acceptable compliance rate on payment of use tax on remote sales to consumers, out-of-state retailers must be obligated to collect and remit use tax on those sales.

Under Kansas law, an out-of-state retailer "doing business" in Kansas is obligated to collect and remit use tax on its sales to consumers in Kansas. K.S.A. 79-3705c. However, United States Supreme Court decisions have restricted the constitutional power of the States to subject interstate sales to sales or use tax. In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the Supreme Court held that the Commerce Clause bars a State from imposing a use tax collection duty on an out-of-state seller with no physical presence (nexus) in the State. Thus, an out-of-state merchant has no legal obligation to collect use tax on its sales to customers located in another State, if the sale is conducted by telephone, mail order, or in recent times, the internet, and if the out-of-state merchant has no physical presence in that State.

Physical presence, or nexus, is established if the out-of-state retailer has employees or a facility permanently located in the State. Temporary presence can be sufficient to establish nexus under certain circumstances (such as frequent deliveries into the state), but this is currently a heavily litigated area of the law.

State governments and local merchants have long been concerned about the fact that mail-order consumer retail sales by out-of-state merchants essentially escape use tax. The rapid growth of remote retail sales over the internet have heightened those concerns.

## Moratorium on Internet Taxation

The Internet Tax Freedom Act, passed by Congress in 1998, placed a three-year moratorium (which expires October 1, 2001) on State and local government taxation of internet access fees and imposition of multiple or discriminatory taxes on electronic commerce. The Internet Tax Freedom Act does not prohibit imposition of sales or use tax on retail sales conducted over the internet. A consumer making purchases from an out-of-state e-commerce merchant over the internet remains legally obligated to pay use tax. If an e-commerce merchant has a physical presence in the taxing State, then the e-commerce merchant is obligated to collect and remit the appropriate sales or use tax on sales to customers located in that State.

As the retail economy grows and becomes more integrated and consolidated, merchants doing business in multiple States face the problem of attempting to comply with different sales and use tax laws of those States. They must devote significant resources to that task. The more difficult it becomes to comply with the sales and use tax laws of various taxing jurisdictions, the more compliance will be discouraged. State and local governments share this concern with merchants.



## Streamlined Sales Tax Project

The Streamlined Sales Tax Project responds to State and local government concerns about loss of revenues from remote sales, first by striving to reduce the burdens on multistate merchants to comply with various State sales and use tax laws, and second, by seeking to provide incentives for multistate merchants to voluntarily collect and remit use tax on sales to customers in States where they may not have any physical presence or legal obligation to collect and remit. An Executive Summary of the Streamlined Sales Tax Project is attached. More information on this Project is available by visiting the following website: [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org).

On December 22, 2000, revenue officials of the 29 participating States involved in the Streamline Sales Tax Project held a teleconference to vote on a motion to approve the Uniform Sales and Use Tax Administration Act ("Act") and Streamline Sales and Use Tax Agreement ("Agreement"), and forward them to the National Governors' Association (NGS) and National Conference of State Legislatures (NCSL) for consideration and to the participating States to allow those interested States to begin work on drafting and introducing legislation needed to join the Agreement. These documents are the product of a year-long drafting effort among the participating state tax officials, with input from the public, including various retailers, local government officials, trade groups, legislators, and others. Copies of the Act and Agreement are attached, as well as summaries of the major provisions in those documents, and the press release describing the vote.

Twenty-seven participating States voted in favor of the motion, and 2 abstained from voting. The 27 participating states voting in favor were: Alabama, Arkansas, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin and Wyoming. The 2 abstaining participating States were Illinois and Mississippi.

The following "observer" States monitored the teleconference: California, Colorado, Connecticut, Georgia, Idaho, Maine, Pennsylvania, Vermont and Washington. A host of retailers (General Electric, SBC Communications, AT & T, May, Toys-R-Us, Walmart, J.C. Penney, Chevron, and others), trade organizations, press, and others also monitored the teleconference.

Approval of the Act and Agreement ended Phase 1 of the Project. Phase 2 will involve the drafting of additional definitions not yet included in the Agreement, development of a uniform tax return, and other tasks. The Act and Agreement are working documents, and participating State tax officials will continue to improve them, with any additional recommendations to be forwarded to NGS, NCSL and the participating states.

On January 24, 2001, tax officials from the participating States held a teleconference to consider and vote on additional amendments to the Act and Agreement. Those amendments, which passed, are also attached. A Project meeting is scheduled for March 5-6, 2001 in Dallas. The steering committee of participating states for the Project is expected to schedule several meetings over the coming months.

In order to join the Agreement, each participating State must pass legislation to conform that state's sales/use tax laws to the uniformity requirements of the Agreement. Before a State can join the Agreement, it must adopt the Act and certify that it's laws are in compliance with the

uniformity requirements. Three-fourths of the other member States must vote that the applying State is in compliance. As soon as 5 States apply, certify their laws' compliance with the Agreement, and three-fourths of those applicants vote favorably on the other respective applicant's compliance, the Agreement becomes effective.

Tax officials in at least 3 participating States (Nebraska, North Carolina and Wyoming) report that they have introduced legislation to adopt both the Act and the uniformity provisions required under the Agreement. Tax officials in Oklahoma and Wisconsin are drafting such legislation. Minnesota and Iowa are also planning to introduce legislation. A status report should be available soon showing the progress of the proposals in various participating State legislatures. At this point, it is too early to determine whether 5, or any, participating States will be in a position to join the Agreement yet this year.

Under consideration for a future teleconference is a proposal to create conditional membership for two years, which would permit States to continue to be involved in the process of improving the Act and Agreement, without having made the legislative changes required to adopt the Act and join the Agreement.

### **Pilot Project**

As of November 2, 2000, all four participating states in the Pilot Project (Kansas, Michigan, North Carolina and Wisconsin) have executed the Memorandum of Understanding for the Pilot. The purpose of this Memorandum is to provide for the development, testing and evaluation of the automated state transaction tax registration, calculation, collection, remittance and reporting systems; evaluate methods for ensuring privacy of purchasers; and make recommendations to other interested States, based on the Project results.

Four Certified Service Providers (CSP) (esalestax.com, Inc.; Pitney Bowes, Inc./Vertex, Inc. subcontractor; Taxware International, Inc./Hewlett-Packard subcontractor; Taxware International, Inc./Pitney Bowes subcontractor) and three retailers have agreed to participate. The names of the participating retailers are confidential. Negotiations are underway with other retailers to participate. The four pilot States are currently in the process of testing and certifying the systems of the CSP's.

The participants anticipate that system operations will begin in February, 2001. The Pilot Project is intended to run for one year after it gets underway, although some delays have occurred.

### **Special Committee on Assessment and Taxation**

This Committee last met in November of 2000. At that time, the Act and Agreement were not yet approved and were still in drafting and revision stage. The report of this Committee on the streamlined sales tax topic, following its meetings this past fall, concluded and recommended: "The Committee encourages that legislation on this topic be submitted to the standing committees as soon as possible in January 2001."

### **"Streamlined" Sales Tax Oversight Committee**

On December 18, 2000, the "Streamlined" Sales Tax Oversight Committee met and recommended that the Department prepare a proposal to be submitted to the legislature in

January 2001 for consideration of an amendment to Kansas sales tax law to comply with the minimum notice requirements for local sales tax rate and boundary changes specified in the Agreement (first day of calendar quarter after minimum of sixty days' notice to retailers) (see Section 308 b. 3. and 5., page 12).

### **Sales Tax Simplification Committee**

The Sales Tax Simplification Committee (composed of Department officials, local government representatives, legislators, and private sector representatives) which has convened several times over the last several months, met most recently on January 12, 2001 to review the approved Act and Agreement. The Committee recommended that the Department prepare and submit legislative proposals for adoption of a modified version of the Act and the change to the minimum notice requirements for local tax rate and boundary changes. The Department is preparing drafts of these proposals and on January 23, 2001, introduced these proposals in two bills in conceptual form to the Senate Assessment and Taxation Committee.

The Sales Tax Simplification Committee is scheduled to meet again on February 9, 2001.

### **Federal Legislation**

As discussed earlier, the moratorium on internet access taxes in the Internet Tax Freedom Act is set to expire in October 2001. As that date approaches, the question of whether (and how long) to extend that moratorium will be debated. In June 2000, United States Senate Bill 2775 was introduced, which proposes to extend the moratorium to December 31, 2005. It also proposes that if states adopt a streamlined sales and use tax system (containing uniformity requirements largely similar to those the Streamline Sales and Use Tax Agreement) by December 31, 2005, then Congress would find that such a system would not place an undue burden on interstate commerce. Congress would also authorize a compact among the states for this purpose. This could potentially pave the way for states to legally require certain out-of-state merchants to collect and remit use tax on remote sales, with or without physical presence. We will follow the progress of this legislative proposal, and any others on this topic, with interest.

## EXECUTIVE SUMMARY

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration. The project incorporates uniform definitions within tax bases, simplified audit and administrative procedures, and emerging technologies to substantially reduce the burdens of tax collection. The Streamlined Sales Tax System is focused on improving sales and use tax administration systems for both Main Street and remote sellers for all types of commerce.

Thirty-nine states are currently involved in the project. Twenty-six states are voting participants in the project because their legislatures have enacted enabling legislation or their governors have issued executive orders or a similar authorization. Thirteen states are non-voting participants in the work of the project because they do not have the formal commitment of the state executive or legislative branches.

The project has addressed its issues through a steering committee and four work groups: Tax Base and Exemption Administration; Tax Rates, Registration, Returns and Remittances; Technology, Audit, Privacy and Paying for the System; and Sourcing and Other Simplifications. Work groups have invited businesses to participate in their meetings, review their work products, and provide feedback. The steering committee has actively engaged national retailers and retail organizations, state tax organizations, and other interested businesses in discussions and project strategy.

The key features of the Streamlined Sales Tax System include:

- Uniform definitions within tax bases. Legislatures still choose what is taxable and exempt but will use the common definitions.
- Simplified exemption administration for use- and entity-based exemptions. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for incorrect exemptions claimed.
- Rate simplification. States will be responsible for the administration of all state and local taxes and the distribution of the local taxes to the local governments. State and local governments will use common tax bases and accept responsibility for notice of rate and boundary changes. States will be encouraged to simplify their own state and local tax rates.
- Uniform sourcing rules. For the sale of property, the states will source the sales tax revenue on a destination basis.

- Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have a limited scope audit, depending on the technology model used.
- Paying for the system. To reduce the financial burdens on sellers, states will assume the responsibility for implementing the Streamlined Sales Tax System.

The Streamlined Sales Tax System will provide sellers the opportunity to use one of three technology models. A seller may select Model 1 where a Certified Service Provider performs all of the seller's sales tax functions. A seller may select Model 2, a Certified Automated System, to perform only the tax calculation function. A larger seller with nationwide sales that has developed its own proprietary sales tax software may select Model 3 and have its own system certified by the states. However, some sellers may choose to continue to use their current systems and still enjoy the benefits of simplification.

Phase 1 of the Streamlined Sales Tax Project will produce model legislation by December 2000 to be considered in year 2001 legislative sessions. The draft model legislation will be drafted by the project and reviewed by a group of legislative attorneys not working on the project before finalization by the participating states.

Phase 2 of the Streamlined Sales Tax Project will be completed by the end of year 2001. This phase will include additional uniform tax base definitions, a uniform tax return, and any model legislation resulting from conducting the technology pilot.



**PRESS RELEASE REGARDING  
DECEMBER 22, 2000 PUBLIC HEARING**

FOR IMMEDIATE RELEASE

December 26, 2000  
Washington, DC

**States Vote to Approve Recommendations on New Sales Tax System**

State representatives to the Streamlined Sales Tax Project involved in formulating the specifics of a new sales and use tax collection and administration system have voted to approve a Uniform Act and Uniform Agreement to implement a more modern system. The Act and Agreement will now be forwarded to the National Governors' Association and National Conference of State Legislatures for consideration and to the states to begin the drafting and legislative process. State legislatures could begin debating the issue in January 2001.

"We are extremely pleased that the states have approved this Uniform Act and Agreement which puts both states and businesses on the road to true sales tax simplification and uniformity," commented Diane L. Hardt, Wisconsin Department of Revenue, a co-chair of the Project. 38 states are currently involved in the Project, which began its work in March 2000. The focus of the Project is to develop a simplified sales and use tax collection and administration system that can be used by all vendors for all types of commerce.

The work of the Project evolved largely in response to pleas from the business community to the states to overhaul their existing sales and use tax laws. Currently, vendors operating in the 45 states with sales taxes must comply with multiple tax rates, varying laws on product definitions, extensive tax return requirements, and costly and time-consuming annual audits.

Hallmarks of the new system are its use of technology, its focus on uniform definitions, uniform tax rates, a one-stop vendor registration system, and minimal vendor audits. "This system brings sales tax administration into the 21<sup>st</sup> century and addresses many of the concerns that businesses have expressed to us over the past several years," stated Charles D. Collins, Jr., North Carolina Department of Revenue, a co-chair of the Project. "Multistate businesses face a number of challenges in complying with the existing sales and use tax laws. Our primary focus has been on easing, or eliminating, the tax collection burden for vendors—while promoting a level playing field in the marketplace."

The Uniform Act and Uniform Agreement adopted by the Streamlined Sales Tax Project will now be submitted to state legislatures for their consideration and enactment. The Act provides the authority for a state to enter into agreement with other states to

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implement the new system. The Agreement sets forth the specific elements of the new sales and use tax system—all of which must be enacted by a state for it to be in compliance and become a participant in the new system.

The Project believes several state legislatures will consider the legislation in 2001. In addition, the Project will continue its work throughout the next year to enable it to incorporate other elements into the new system including additional uniform definitions and modifications to technology models.

Additional information on the Streamlined Sales Tax Project, including a copy of the Uniform Act and Uniform Agreement, can be found on the Project's website at [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org).

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## SUMMARY OF UNIFORM SALES AND USE TAX ADMINISTRATION ACT

Section 4 of the Act authorizes the state taxing authority to enter into the Agreement with one or more other states. Section 5 provides that the Agreement does not make any changes to a state's existing sales and use tax laws. The changes needed for that state's tax laws to comply with the uniformity provisions in the Agreement require separate legislative action. Section 6 sets out the general uniformity principles that must be included in the Agreement. Section 7 defines the Agreement as an accord among individual sovereign states (as distinguished from a compact). Section 8 provides that neither the Act nor the Agreement give anyone the ability to claim that any existing state law is invalid, because it is not consistent with the Agreement. The legislative changes necessary to bring the state's laws into compliance with the Agreement are to be listed at Section 10, and succeeding sections.

## SUMMARY OF STREAMLINE SALES AND USE TAX AGREEMENT

### 1. Confidentiality of Taxpayer Information, Section 322

The Agreement protects the confidentiality of taxpayer information. The Agreement would limit the disclosure of Personally Identifiable Information (PII) to transactions involving exemptions, tax fraud and audits.

### 2. Base and Rate Uniformity, Sections 304 and 308

The Agreement promotes uniformity of state and local tax bases and rates. State and local tax bases are required to be identical after December 31, 2005. Section 304. After December 31, 2005, states may not impose different sales tax rates on specific items. The rates must be uniform. Section 308, a. 4. Caps and thresholds on state sales or use tax rates are not allowed after December 31, 2005. Section 308 a. 3. Boats, aircraft, motor vehicles, modular, manufactured or mobile homes are exempted from the uniform base and rate requirements. Section 304, b; Section 308, a. 6, b. 10.

Local rate and boundary changes are to be restricted to the 1<sup>st</sup> day of the 1<sup>st</sup> calendar quarter after a minimum of 60-days notice of the change to retailers. Section 308, b. 3 and 5.

The state must maintain a database adopting the federal information processing standards (FIPS) for identifying local taxing jurisdictions and assigning zip codes to the local tax rates and jurisdictions. If the zip code area includes more than one tax rate and jurisdiction, the lowest rate must apply. Section 308, b. 7 and 8. However, these databases need not exist at the time the state joins the Agreement. Member states will jointly determine the effective dates and availability of these databases. Section 308, b. f.

NOTE: *This Agreement may raise the issue of whether the authorization of local option use tax in Kansas should be considered. Kansas law currently does not authorize any local option use tax.*

*Currently, the state and local sales tax base is not entirely uniform, in that the state does not impose sales tax on agricultural or residential utilities, whereas local jurisdictions do. Compare*

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*K.S.A. 79-3606(w) to K.S.A. 12-189a. The Agreement would require that this lack of uniformity be eliminated or otherwise dealt with legislatively by 2006.*

*This Agreement would require a legislative change to adopt the minimum 1<sup>st</sup> day of calendar quarter/60-day notice to retailers requirement for local tax and boundary changes. The Department has introduced to the Senate Assessment and Taxation Committee a bill in concept to accomplish this. Under K.S.A. 12-191, a local sales tax takes effect on the first day of the calendar quarter following the 30<sup>th</sup> day after the date of the general election authorizing the tax. A local sales tax approved at any other election takes effect on the first day of the calendar quarter following the 60<sup>th</sup> day after the date of the election. Local tax in an annexed area becomes effective on the first day of the month following the 30<sup>th</sup> day after the city provides the Department a certified copy of the annexation ordinance and map.*

*The Department currently does not use the FIPS system or zip code areas for identifying local taxing jurisdictions. Costs will be involved in implementing this system. In addition, local taxing jurisdictions do not necessarily align with zip code areas. Situations exist where there are different local tax rates within the same zip code area, and the lower rate would have to apply, under the uniformity requirements of the Agreement.*

### **3. Exemption Administration, Section 314**

This provision addresses the uniform administration of tax exemptions claimed by purchasers who purchase taxable products and services. It provides for electronic filing of exemption certificates at time of purchase. If the retailer receives a properly completed exemption certificate in "good faith," then the state must pursue the purchaser claimant for any unpaid sales tax. The retailer must maintain records of the exemption certificates. Member states may require purchasers to obtain identification numbers, to be provided to the retailer at the time the exemption is claimed. The member states will adopt a uniform electronic exemption form.

NOTE: *Only slight revisions to current Kansas law would be needed to conform to this provision.*

### **4. Technological Model, Sections 204, 206, 208, 210, 212, and Compensation, Article VI**

These provisions concern the development of a business and technology model for the administration of the streamlined sales tax system, proposing the following four models: (1) Certified Service Provider (CSP) as agent, handling the sales tax collection duties for the seller; (2) Certified Automated System (CAS), providing sales tax calculations services to the seller (who performs the remaining functions); (3) proprietary system as a Certified Automated System (CAS), for large businesses which already have a proprietary system for sales tax collection duties; and (4) existing practice .

NOTE: *Compensation to CSP's and participating retailers is to be based primarily on some percentage of "new money" (revenue from sales that otherwise would not have been reported and taxed) during the first two years for Model 1, 2 and 3 participants, subject to the contracts with CSP's. During the public comment sessions on the Agreement, the retail community made clear that they would like to see across-the-board discounts to all retailers included. Only some*

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*states currently provide discounts to retailers collecting and remitting sales/use tax. Kansas is not one of them. Compensation to all retailers is a matter left up to each state.*

#### **5. Uniform Bad Debt, Rounding and Sourcing, Sections 310, 318**

The Agreement establishes uniform bad debt provisions, proposes a method for rounding tax calculations and determining the source (taxing jurisdiction) for a transaction. Sourcing will be to the retailer's location, if the merchandise is received at the retailer's location. Sourcing would be to the purchaser's location, if the merchandise is received at the purchaser's location. Motor vehicles, boats and aircraft will be excluded from the sourcing provisions, and existing state law will apply to source those transactions.

*NOTE: This would require legislation to change transaction sourcing from the seller's location to the purchaser's location (i.e., "destination" sourcing) for merchandise shipped or delivered to the purchaser, which potentially could shift local tax revenues, to some degree. Motor vehicles, boats, aircraft, modular, manufactured and mobile homes are excluded from this sourcing provision, so Kansas law on sourcing would not need to change for those items. Current law generally sources the sales transactions to the retailer's location. K.S.A. 12-191.*

#### **6. Uniform Return Composition and Filing, Section 316**

This Agreement provides for: (1) establishing a simple electronic filing system for retailers using the certified system to file one return per state; (2) establishing a relaxed return (one return per state) for retailers that choose not to use the certified system but have no presence in a state; and (3) development of a more uniform return that would be available to all retailers.

#### **7. One-Stop Registration, Article IV**

The Agreement addresses the registration process and the need for a 'one-stop' electronic registration system for multi-state businesses.

*NOTE: Section 402 provides for amnesty to sellers for uncollected sales tax (for the prior 12 months) who newly register under the Agreement. Kansas law does not currently provide for amnesty.*

#### **8. Uniform Definitions, Section 312**

This provision concerns simplifying the administration of sales and use taxes through the adoption of common definitions among the states, while preserving the ability of individual states to make policy choices regarding their sales and use tax base, in deciding which of the defined items are or are not included in a state's tax base. Most of this provision concerns definitions for food and clothing.

*NOTE: Many states have exemptions for various types of food and clothing. During the drafting process, difficult debates arose among those states, in attempting to come up with*

*uniform definitions. Some of those debates are ongoing. Because clothing and food are currently included in the sales tax base for Kansas, many of those difficulties do not apply to Kansas law.*

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## Uniform Sales and Use Tax Administration Act and Streamlined Sales and Use Tax Agreement

### Introduction | Approved Act | Approved Agreement

#### Introduction

On December 22, 2000 representatives of the participating states to the Streamlined Sales Tax Project voted to approve a Uniform Sales and Use Tax Administration Act and Streamlined Sales and Use Tax Agreement that contain provisions to modernize and simplify collection and administration of sales and use taxes. State legislatures could begin consideration of the Act and Agreement in January 2001.

Following are copies of the Act and Agreement as amended and approved during the December 22 Project meeting. Only minor typographical and grammatical changes were made to the December 20 draft of the Act and Agreement posted to the Project's website prior to its approval on December 22.

The Streamlined Sales Tax Project will continue to work on additional uniformity features throughout 2001.

Individuals interested in learning more about the Project should contact the Project co-chairs, Diane Hardt (Wisconsin Department of Revenue, [dhardt@dor.state.wi.us](mailto:dhardt@dor.state.wi.us)) and Charles Collins (North Carolina Department of Revenue, [charles.collins@ncmail.net](mailto:charles.collins@ncmail.net)) or Ellen Marshall (Communications Liaison, [ellen\\_marshall@hotmail.com](mailto:ellen_marshall@hotmail.com)).

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# ADMINISTRATION ACT

## AS APPROVED DECEMBER 22, 2000

### SECTION 1 TITLE

Section 1 through Section 9 shall be known as and referred to as the "Uniform Sales and Use Tax Administration Act."

### SECTION 2 DEFINITIONS

As used in this Act:

- a. "Agreement" means the Streamlined Sales and Use Tax Agreement.
- b. "Certified Automated System" means software certified jointly by the states that are signatories to 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.
- c. "Certified Service Provider" means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions.
- d. "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.
- e. "Sales Tax" means the tax levied under (CITE SPECIFIC STATUTE).
- f. "Seller" means any person making sales, leases, or rentals of personal property or services.
- g. "State" means any state of the United States and the District of Columbia.
- h. "Use Tax" means the tax levied under (CITE SPECIFIC STATUTE).

### SECTION 3 LEGISLATIVE FINDING (OPTIONAL)

The (LEGISLATIVE BODY) finds that this State should enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

### SECTION 4 AUTHORITY TO ENTER AGREEMENT

The (STATE TAXING AUTHORITY) is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all



types of commerce. In furtherance of the Agreement, the (STATE TAXING AUTHORITY) is authorized to act jointly with other states that are members of the Agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The (STATE TAXING AUTHORITY) is further authorized to take other actions reasonably required to implement the provisions set forth in this Act. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The (STATE TAXING AUTHORITY) or the (AUTHORITY'S) designee is authorized to represent this state before the other states that are signatories to the Agreement.

## SECTION 5 RELATIONSHIP TO STATE LAW

No provision of the Agreement authorized by this Act in whole or part invalidates or amends any provision of the law of this state. Adoption of the Agreement by this State does not amend or modify any law of this State. Implementation of any condition of the Agreement in this state, whether adopted before, at, or after membership of this state in the Agreement, must be by the action of this state.

## SECTION 6 AGREEMENT REQUIREMENTS

The (STATE TAXING AUTHORITY) shall not enter into the Streamlined Sales and Use Tax Agreement unless the Agreement requires each state to abide by the following requirements:

a. Uniform State Rate. The Agreement must set restrictions to achieve more uniform state rates through the following:

1. Limiting the number of state rates.
2. Eliminating maximums on the amount of state tax that is due on a transaction.
3. Eliminating thresholds on the application of state tax.

b. Uniform Standards. The Agreement must establish uniform standards for the following:

1. The sourcing of transactions to taxing jurisdictions.
2. The administration of exempt sales.
3. The allowances a seller can take for bad debts.
4. Sales and use tax returns and remittances.

c. Uniform Definitions. The Agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

d. Central Registration. The Agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use

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taxes for all signatory states.

e. No Nexus Attribution. The Agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

f. Local Sales and Use Taxes. The Agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

1. Restricting and eliminating variances between the state and local tax bases.
2. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
3. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.
4. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

j. Monetary Allowances. The Agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

k. State Compliance. The Agreement must require each state to certify compliance with the terms of the Agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.

l. Consumer Privacy. The Agreement must require each state to adopt a uniform policy for Certified Service Providers that protects the privacy of consumers and maintains the confidentiality of tax information.

m. Advisory Councils. The Agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the Agreement.

## SECTION 7 COOPERATING SOVEREIGNS

The Agreement authorized by this Act is an accord 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 8 LIMITED BINDING AND BENEFICIAL EFFECT

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a. The Agreement authorized by this Act binds and inures only to the benefit of this State and the other member states. No person, other than a member state, is an intended beneficiary of the Agreement. Any benefit to a person other than a state is established by the law of this State and the other member states and not by the terms of the Agreement.

b. Consistent with subsection (a), no person shall have any cause of action or defense under the Agreement or by virtue of this 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 this State, or any political subdivision of this State on the ground that the action or inaction is inconsistent with the Agreement.

c. No law of this 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 9 SELLER AND THIRD PARTY LIABILITY

a. A Certified Service Provider is the agent of a seller, with whom the Certified Service Provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the Certified Service Provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

A seller that contracts with a Certified Service Provider is not liable to the state for sales or use tax due on transactions processed by the Certified Service Provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the Certified Service Provider. A seller is subject to audit for transactions not processed by the Certified Service Provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the Certified Service Provider's system is functioning properly and the extent to which the seller's transactions are being processed by the Certified Service Provider.

b. A person that provides a Certified Automated System is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the Certified Automated System. A seller that uses a Certified Automated System remains responsible and is liable to the state for reporting and remitting tax.

c. A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

## SECTIONS 10 THROUGH \_\_\_ INDIVIDUAL STATE AMENDMENTS

These sections are reserved for each individual state to make statutory amendments necessary to bring it into compliance with the Streamlined Sales and Use Tax Agreement. Some examples would be amending the state's current sourcing rule to comply with the new uniform rule, making the effective dates of local rate changes to the first day of a calendar quarter and providing for a sixty (60) day notice, or enacting exemptions necessary to preserve, to the extent consistent with the uniform definitions, current non-taxability of various goods and services.

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**SECTION \_\_\_ EFFECTIVE DATE (OPTIONAL)**

Sections 1 through 9 of this Act are effective upon ratification (or whatever phrase is used in the state to indicate that the act is effective immediately) or specific date.

Sections 10 through \_\_\_ of this Act becomes effective on the date this State becomes a member of the Streamlined Sales and Use Tax Agreement.

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# STREAMLINED SALES AND USE TAX AGREEMENT

AS APPROVED DECEMBER 22, 2000

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**ARTICLE I  
PURPOSE AND PRINCIPLE****100 TITLE**

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

**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. Central, electronic registration system for all member states.
- d. Simplification of state and local tax rates.
- e. Uniform sourcing rules for all taxable transactions.
- f. Uniform definitions within tax bases.
- g. Simplified administration of exemptions.
- h. Simplified tax returns.
- i. Uniform rules for deductions of bad debts.
- j. Simplification of tax remittances.
- k. Protection of consumer privacy.

**104 APPLICATION**

This Agreement applies only to the levy of sales and use taxes identified in the Uniform

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Sales and Use Tax Administration Act enacted by each member state.

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## ARTICLE II DEFINITIONS

The following definitions apply in this Agreement:

### **200 AGENT**

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

### **202 AGREEMENT**

The Streamlined Sales and Use Tax Agreement and as subsequently amended.

### **204 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.

### **206 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.

### **208 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.

### **210 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.

### **212 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 (or a lower amount which may be agreed to by the states acting jointly), 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 section, a seller includes an affiliated group of sellers using the same proprietary system.

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**214 PERSON**

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

**216 PURCHASER**

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

**218 REGISTERED UNDER THIS AGREEMENT**

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

**220 SELLER**

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

**222 STATE**

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

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**ARTICLE III  
REQUIREMENTS EACH STATE MUST  
ACCEPT TO PARTICIPATE**

**300 COMPLIANCE**

As a requisite to entering into and remaining a member of the Agreement, each State must comply with the provisions of this Agreement in accordance with the provisions of Article VII of this Agreement.

**302 STATE ADMINISTRATION**

Each State must provide state level administration of sales and use taxes. Sellers are only required to register with, file returns with, and remit funds to the state taxing authority. The State must collect any local taxes and distribute them to the appropriate taxing jurisdictions. Member states must conduct, or authorize others to conduct on their behalf, all audits of the sellers registered under this Agreement, and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered under this Agreement.

**304 STATE AND LOCAL TAX BASES**

a. Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the State must have a common tax base. After December 31, 2005, the tax base for local jurisdictions must be identical to the state tax base, unless

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federal law prohibits the local jurisdictions from taxing a transaction taxed by the State.

b. This section does not apply to sales or use taxes levied on the transfer of motor vehicles, aircraft, or watercraft.

### 306 SELLER REGISTRATION

Each State must 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 member states. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

### 308 STATE AND LOCAL TAX LEVIES

a. To reduce the complexity and administrative burden of collecting sales and use taxes, all member states must:

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

Failure of a seller to receive notice or failure of a 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.

2. 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.

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3. 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 State may continue to have caps and thresholds until that date.
  4. Not have multiple state tax rates on items of personal property or services after December 31, 2005. A State may continue to have a generally applicable state tax rate and additional state rates until that date.
  5. Provide that the tax rate equals the combination of the state and local sales tax rates. In computing the tax to be collected as the result of any transaction, the tax amount must be carried to the third decimal place. Amounts of tax less than one-half of one cent shall be disregarded and amounts of tax of one-half cent or more shall be considered an additional cent. Sellers may elect to compute the tax due on transactions on an item or invoice basis.
  6. The provisions of paragraphs (3) and (4) of this subsection do not apply to sales or use taxes levied on the transfer of motor vehicles, aircraft, or watercraft.
- b. Member states that have local jurisdictions that levy a sales or use tax must:
1. Not have more than one sales tax rate or more than one use tax rate per local taxing jurisdiction. If the local jurisdiction levies both a sales tax and a use tax, the rates must be identical.
  2. Not place caps or thresholds on the application of local sales or use tax rates or exemptions that are based on the value of the transaction or item.
  3. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty (60) days' notice to sellers.
  4. 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 120 days notice to sellers.
  5. 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 (60) days notice to sellers.
  6. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database must include a description of the change and the effective date of the change for sales and use tax purposes.
  7. 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 jointly by the

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member states.

8. Provide and maintain a database that assigns each five (5) digit and nine (9) digit zip code within the State to the proper tax rates and jurisdictions. The State must apply the lowest 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 (9) digit zip code designation is not available for a street address or if a seller is unable to determine the nine (9) digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five (5) digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine (9) digit zip code designation by utilizing software approved by the member states that makes this designation from the street address and the five (5) digit zip code of the purchaser.
9. Participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act. At a future date, member states acting jointly may allow a member state to require sellers to use an address-based system provided by that member state. If any State develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in paragraph 8 of this section.
10. The provisions of paragraphs (1) and (2) of this subsection do not apply to sales or use taxes levied on the transfer of motor vehicles, aircraft, or watercraft.
  - c. The member states must relieve sellers and Certified Service Providers from liability to the State or local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller relying on erroneous data provided by a State on tax rates, boundaries, or taxing jurisdiction assignments. This relief provision shall also apply to a seller employing an address-based system for assigning taxing jurisdictions pursuant to the federal Mobile Telecommunications Sourcing Act. However, the relief provided by this paragraph is not available to a seller of services covered under the Mobile Telecommunications Sourcing Act that does not employ an address-based assignment system provided by the State pursuant to that Act.
  - d. The electronic databases, provided for in paragraphs (b)(6), (b)(7), (b)(8), and (b)(9) of this section, must be in a downloadable format approved by the member states acting jointly.
  - e. The provisions of paragraphs (b)(8) and (b)(9) do not apply when the purchased product is received by the purchaser at the business location of the seller.
  - f. The databases provided by (b)(6), (b)(7), and (b)(8) are not a requirement of a State prior to entering into the Agreement. The effective dates for availability and use of the databases will be determined by the member states acting jointly.
  - g. if a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the State must not apply an exemption after December 31, 2003

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unless the item exempted has been defined under the provisions of Section 312. Further, if the State provides local jurisdictions with the option of levying a sales or use tax, the State must provide notice of the exemption period at least sixty (60) days prior to the first day of the calendar quarter in which the exemption period will begin and apply the exemption to both state and local tax bases.

### 310 UNIFORM SOURCING RULES

The member states agree to require sellers to source the sale (including the lease or rental) of a product in accordance with the following provisions. These provisions apply regardless of the characterization of a product as tangible personal property, a digital good, or a service (excluding, for the present, telecommunications). These provisions 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 sale of a product. These provisions do not affect the obligation of a seller as purchaser to remit tax on the use of the product to the taxing jurisdictions of that use.

- a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- b. 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.
- c. When (a) and (b) 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.
- d. When (a), (b), and (c) 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.
- e. When none of the previous rules of (a), (b), (c), or (d) apply, including the circumstance where 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 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).
- f. Notwithstanding the previously stated rules, 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 or a service that the digital good 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).
  1. 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

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to collect, pay, or remit the applicable tax on a direct pay basis.

2. 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.
  3. 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 subparagraph (f)(2) and the facts existing at the time of the sale) until it is revoked in writing.
  4. 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 subparagraph (f)(2) in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.
- g. The terms "receive" and "receipt" mean:
1. taking possession of tangible personal property,
  2. making first use of services, or
  3. 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.
- h. This section is reserved for a specific sourcing rule applicable to telecommunications and possibly additional specific sourcing rules for other services as necessary to effect the intent of providing for uniform sourcing of transactions. Until the specific sourcing rule for telecommunications is adopted, the sourcing rules presently applicable to telecommunications will remain in effect in each State.
  - i. This section does not apply to sales or use taxes levied on the transfer of motor vehicles, aircraft, or watercraft. These items must be sourced according to the requirements of each member state.

### 312 UNIFORM DEFINITIONS

A. Nothing in this Agreement shall be construed to require any State to tax or not tax any item or service, except that a State must use the definitions specified by the Agreement if it chooses to tax or not tax the items or services covered by those definitions. A State must include all items specifically listed within a definition as provided herein. A State may not vary from any definition except as otherwise specifically provided by this Agreement. The terms "includes" and "including" when used in a definition contained in this section does not exclude other things otherwise within the meaning of the term defined.

Notwithstanding the foregoing requirements of this subsection or any other provision of this

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Agreement, a State may maintain its tax treatment of food in a manner that differs from the definitions provided in paragraph (D) of this section, 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 this Agreement.

## B. CLOTHING AND RELATED ITEMS

1. **"Clothing"** shall mean all human wearing apparel suitable for general use. The following list is intended to be examples and not an all inclusive list of possibilities.

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 adults - including disposables)
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
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 (knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, thimbles)
  5. Sewing materials that become part of clothing (buttons, fabric, lace, thread, yarn, zippers)
2. The following definitions are mutually exclusive of "clothing" and each other.

- a. **"Clothing accessories or equipment"** shall mean incidental items worn on the person or in conjunction with clothing. The following list is intended to be examples and not an all inclusive list of possibilities.

Clothing accessories shall include:

1. Briefcases
2. Cosmetics
3. Hair notions, including barrettes, hair bows, hair nets, etc.
4. Handbags
5. Handkerchiefs
6. Jewelry
7. Sun glasses, non-prescription
8. Umbrellas
9. Wallets
10. Watches
11. Wigs and hair pieces

- b. **"Sport or recreational equipment"** shall mean items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. The following list is intended to be examples and not an all inclusive list of possibilities.

Sport or recreational equipment shall include:

1. Ballet and tap shoes
2. Cleated or spiked athletic shoes
3. Gloves (baseball, bowling, boxing, hockey, golf, etc.)
4. Goggles
5. Hand and elbow guards
6. Life preservers and vests
7. Mouth guards
8. Roller and ice skates
9. Shin guards
10. Shoulder pads
11. Ski boots
12. Waders

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## 13. Wetsuits and fins

- c. **"Protective equipment"** shall mean items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. The following list is intended to be examples and not an all inclusive list of possibilities.

Protective equipment shall include:

1. Breathing masks
2. Clean room apparel and equipment
3. Ear and hearing protectors
4. Face shields
5. Finger guards
6. Hard hats
7. Helmets
8. Paint or dust respirators
9. Protective gloves
10. Safety glasses and goggles
11. Safety belts
12. Tool belts
13. Welders gloves and masks

## C. DELIVERY CHARGES

**"Delivery charges"** means charges by the seller 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.

## D. FOOD AND FOOD INGREDIENTS

1. **"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:
  - a. **"Alcoholic Beverages"** which means beverages that are suitable for human consumption and contain one-half of one per cent or more of alcohol by volume, and
  - b. **"Tobacco"** which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.
2. The following definitions are categories that can be excluded from the definition of the term "food and food ingredients" and are mutually exclusive of each other.
  - a. **"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

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not include any preparation containing flour and shall require no refrigeration.

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

1. Contains one or more of the following dietary ingredients:
  - a. a vitamin;
  - b. a mineral;
  - c. an herb or other botanical;
  - d. an amino acid;
  - e. a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
  - f. a concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and
2. Is 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
3. Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R §101.36.

c. **"Soft drinks"** means non-alcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain:

1. milk or milk products;
2. soy, rice, or similar milk substitutes; or
3. greater than fifty percent of vegetable or fruit juice by volume.

3. The following definitions may also be excluded from the term "food and food ingredients":

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

b. **"Prepared food"** means:

1. Food sold in a heated state or heated by the seller;
2. Two or more food ingredients mixed or combined by the seller for sale as a single item; or
3. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

"Prepared food" does not include food that is only sliced, repackaged, or pasteurized by the seller.

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**E. PURCHASE PRICE**

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

**F. RETAIL SALE**

"Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

**G. SALES PRICE**

1. "Sales price" applies to the measure subject to sales tax and means the total amount or 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. 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.

2. States may exclude from the 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.

3. "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.

**314 ADMINISTRATION OF EXEMPTIONS**

a. To reduce the complexity and administrative burden of transactions exempt from sales or use tax, the following provisions must be followed when a purchaser claims an exemption:

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1. The seller must obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the member states acting jointly.
2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper certificate is used.
3. The seller must use the standard form for claiming an exemption electronically as adopted jointly by the member states.
4. The seller must 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 which must be presented to the seller at the time of the sale.
6. The seller must maintain proper records of exempt transactions and provide them to a member state when requested.

b. The member states must 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.

### 316 UNIFORM TAX RETURNS

To reduce the complexity and administrative burden of preparing and filing sales and use tax returns, all member states must:

- a. Require that only one return per taxing period per seller be filed for the State and all the taxing jurisdictions within the State.
- b. Require that returns be due no sooner than the 20<sup>th</sup> 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 which does not include more data fields than permitted by the member states acting jointly. States may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed jointly by the member states.
- d. Allow any seller that is registered under this 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, the State must 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 (1) 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 paragraph (d)(2) of this section, a State may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for a State of \$1,000 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

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electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2003.

### 318 UNIFORM RULES FOR DEDUCTIONS OF BAD DEBTS

In order to reduce the complexity and administrative burden of taking a deduction for bad debts incurred by a seller, the member states must:

- a. In computing the amount of tax due, allow a seller to deduct bad debts from the total amount upon which the tax is calculated for any return. Any deduction taken or refund paid which is attributed to bad debts shall not include interest.
- b. Define for purposes of this section, "bad debt" to mean any portion of the purchase price of a transaction that a seller has reported as taxable and for which the seller legally claims as a bad debt deduction for federal income tax purposes. Bad debts include, but are not limited to, worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use taxes charged on the purchase price, uncollectible 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, debts sold or assigned to third parties for collection, and repossessed property.
- c. Allow bad debts to be deducted within twelve months following the month in which the bad debt has been charged off for federal income tax purposes. For purposes of this paragraph, "charged off for federal income tax purposes" includes the charging off of unpaid balances due on accounts as uncollectible, or declaring as uncollectible such unpaid balance due on accounts in the instance of a seller who is not required to file federal income tax returns.
- d. Require that, if a deduction is taken for a bad debt and the seller subsequently collects the debt 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. Allow a seller to obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within a twelve month period defined by that bad debt.
- f. Where a seller's filing responsibilities have been assumed by a Certified Service Provider, 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 computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first to the price of the property or service and sales tax thereon, proportionally, and secondly to interest, service charges, and any other charges.

### 320 UNIFORM RULES FOR REMITTANCES OF FUNDS

To reduce the complexity and administrative burden of remitting funds to the states, the

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member states agree to:

- a. Require only one remittance per return except as provided in this paragraph. If any additional remittance is required, it may only be required from sellers that collect more than \$30,000 in sales and use taxes in the State during the preceding calendar year as provided herein. The amount of the additional remittance must be determined through a calculation method rather than actual collections and must 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 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 member states acting jointly.

### 322 CONFIDENTIALITY AND PRIVACY PROTECTIONS

- 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 Certified Service Provider must perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers. To preserve the privacy of consumers, member states agree that, with respect to Model 1:
  1. A Certified Service Provider's system must be designed and tested to ensure that the fundamental precept of anonymity is respected, and that personally identifiable information is only used when necessary for the administration of Model 1 and only when the Certified Service Provider has clear and conspicuous notice of its use.
  2. Certified Service Providers must provide consumers clear and conspicuous

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notice of their information practice, including what information they collect, how they collect the information, how they use the information, and whether they disclose the information to member states.

3. Certified Service Providers' retention of personally identifiable information will be limited to exemption claims by reason of a consumer's status or intended use of the goods or services purchased, to investigations of fraud, and to the extent necessary, to ensure the reliability of the Certified Service Providers' technology in Model 1.
  4. Certified Service Providers must provide such technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.
  5. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate authorities.
  6. When personally identifiable information is retained for limited purposes by or on behalf of the member states, in the absence of exigent circumstances, individuals should be provided with reasonable notification of such retention and should be afforded reasonable access to their own data and a right to correct inaccurately recorded data.
  7. If anyone other than a member state seeks to discover personally identifiable information, then, in the absence of exigent circumstances, a reasonable and timely effort should be made to notify the individual of such request.
- d. The member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this Agreement does not enlarge or limit the member states' authority to:
1. Conduct audits or other review as provided under this 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.
- e. Without limitation, this privacy policy does not enlarge or limit any existing or future privacy policies of sellers in Model 1.

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#### ARTICLE IV

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## SELLER REGISTRATION

### 400 SELLER PARTICIPATION

- a. In order to simplify the seller registration process, the member states will 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 collected on behalf of the State.
- c. In member states where the seller has a requirement to register prior to registering under this 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. Registration with the central registration system and the collection of sales and use taxes in the member states will not be used as a factor in determining whether the seller has nexus with a State for any tax.

### 402 AMNESTY FOR REGISTRATIONS

- a. Subject to the limitations stated below in this section and the following sections:
  1. A State participating in the Streamlined Sales and Use Tax Agreement will provide amnesty for uncollected or unpaid sales and/or use tax to a seller who registers to pay and/or to collect and remit applicable sales and/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 commencement of the State's participation in the Agreement.
  2. The amnesty will preclude assessment for uncollected or unpaid sales and/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 will 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 and/or use taxes already paid or remitted to the State or to taxes collected by the seller.

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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 and/or collection and remittance of applicable sales and/or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability is tolled during this thirty-six month period.

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

f. A State participating in the Agreement may allow amnesty on terms and conditions more favorable to a seller.

#### 404 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 Seller selects a Certified Service Provider (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 Seller selects a Certified Automated System (CAS) to use which calculates the amount of tax due on a transaction.
- c. MODEL 3 Seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.

#### 406 REGISTRATION BY AN AGENT

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

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### ARTICLE V

#### PROVIDER AND SYSTEM CERTIFICATION

##### 500 CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS

- a. In order to facilitate the provisions of this Agreement, the member states acting jointly will certify automated systems and service providers to aid in the administration of sale and use tax collections.
- b. The member states acting jointly may certify a person as a Certified Service Provider if the person meets all of the following requirements:

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1. The person uses a Certified Automated System
  2. The person integrates its Certified Automated System 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.
  6. The person enters into a contract with the member states and agrees to comply with the terms of the contract.
- c. The member states acting jointly may certify a software program as a Certified Automated System if the member states determine 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, based on the uniform sourcing provision established under the Agreement.
  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 member states.
  5. It can meet any other requirement set by the member states.
- d. The member states acting jointly may establish one or more sales tax performance standards for multistate sellers that meet the eligibility criteria set by the member states and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

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## ARTICLE VI

### MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES TAX COLLECTION

#### 600 MONETARY ALLOWANCES FOR CSPs AND SELLERS

This Article addresses the monetary allowances to be provided by a member state to a CSP in Model 1 or to a seller in Model 2 or Model 3 for implementing new technological models. These allowances shall be subject to review by the member states as the efficiency of technology improves and economies of scale arise from increasing transaction volumes processed through these systems. The non-monetary benefits that accrue to all sellers that participate in the Agreement are addressed in other sections. These non-monetary benefits include limitations on the assessment of back taxes, reduced audit scope, uniform returns, and other methods of tax compliance simplification.

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**602 MONETARY ALLOWANCE UNDER MODEL 1**

a. The member states agree to provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract the member states sign with the CSP. The details of the monetary allowance are provided through the contract process. The allowance will be funded entirely from money collected in Model 1.

b. The member states anticipate a monetary allowance to a CSP to be one or more of the following incentives:

1. A base rate that applies to taxable transactions processed by the CSP.
2. For a period not to exceed twenty-four (24) 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. "Voluntary seller" means a seller that does not have a requirement to register to collect the tax for a member state.

**604 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 (24) 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 (24) 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. "Voluntary seller" means a seller that does not have a requirement to register to collect the tax for a member state.
2. Following the conclusion of the twenty-four (24) 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.

**606 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:

1. For a period not to exceed twenty-four (24) months following a voluntary seller's registration through the Agreement's central registration process, a percentage

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of tax revenue generated for a member state by the voluntary seller. "Voluntary seller" means a seller that does not have a requirement to register to collect the tax for a member state.

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

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## ARTICLE VII

### STATE ENTRY AND WITHDRAWAL

#### 700 ENTRY INTO AGREEMENT

Any State may apply to become a party to this Agreement by executing an adopting resolution and specifying the proposed date of entry. The applying State shall agree to abide by all terms, conditions, and requirements of the Agreement, adopt the Uniform Sales and Use Tax Administration Act, and provide certification of compliance with the terms of the Agreement along with its adopting resolution. A copy of the adopting resolution and the certification of compliance shall be provided to each member state for the purpose of obtaining the required endorsement.

#### 702 CERTIFICATION OF COMPLIANCE

The certification of compliance shall document compliance with the provisions of this Agreement and cite applicable statutes, regulations, or other authorities supporting such compliance. Each member state shall maintain and make the instrument available for public inspection.

#### 704 INITIAL ADOPTING STATES

This Agreement shall become effective when five (5) states have completed the prescribed adopting resolution. An initial state shall be approved by being found in compliance with the requirements of this Agreement by a vote of three-fourths majority of the other initial states.

#### 706 CONDITIONS FOR MEMBERSHIP

The member states shall vote whether the petitioning state is in compliance to accept its petition for membership. A three-fourths vote of all the member states is required. A State is in compliance if its laws, rules or regulations, and policies are consistent with this Agreement and do not substantially deviate from the requirements set forth in this Agreement. Public notice and opportunity for comment will be given before a State is allowed to participate in the Agreement.

#### 708 AGREEMENT ADMINISTRATION

The member states must organize to govern compliance of each State participating in the Agreement and take other actions as may be necessary to administer and implement the provisions contained herein. The member states acting jointly must appoint an advisory

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council to consult with in the administration of the Agreement and on issues of individual state compliance. Members of the advisory council shall include representatives from business and any other interested persons.

### **710 WITHDRAWAL OF MEMBERSHIP**

This Agreement shall continue in full force and effect, after its original adoption, as to each State until withdrawn by the proper officials of a State. Such withdrawal shall not be effective until the first day of a calendar quarter after a minimum of sixty (60) days' notice. Such notification shall immediately be sent to the officials of the other member states of the Agreement. However, withdrawal by one State shall not effect the Agreement among other states. Notwithstanding the withdrawal, the obligations incurred by the withdrawing State shall survive the withdrawal during its membership.

### **712 EXPULSION OF MEMBER STATES**

Any member state may request a resolution before the member states acting jointly to expel another member state which is not in compliance with the terms of this Agreement. A resolution expelling a member state from the Agreement shall require the affirmative vote of three-fourths of the total member states, excluding the State that is the subject of the resolution. The member state that is the subject of the resolution will not be allowed to vote. Failure of a member state to vote shall be deemed a vote against the resolution of expulsion.

### **714 CONTINUED ROLE OF STREAMLINED SALES TAX PROJECT AND STATE ADVISORY COMMITTEE**

Until such time as this Agreement becomes effective pursuant to Section 704, it may be amended by the Streamlined Sales Tax Project pursuant to Operating Rules adopted by the Project. After this Agreement becomes effective pursuant to Section 704, all states that are participating members of the Streamlined Sales Tax Project pursuant to the Operating Rules of the Project shall become the State Advisory Committee to the member states. This Committee shall continue the work of the Streamlined Sales Tax Project and shall provide input to the member states on issues regarding the inclusion of additional states into membership. If additional states wish to join the Committee, they may do so pursuant to the Operating Rules adopted by the Project or by subsequent procedures adopted by the Committee. A state may choose to cease to participate at any time. Any state that is not a member of the Committee may participate fully in the work of the Committee except that they shall not have the right to vote.

The Project and, when effective, the Committee shall work on the following issues:

1. The continued development of uniform definitions;
2. The development of a simpler, more uniform tax return;
3. The development of product codes; and
4. Other issues as agreed upon by the Project and the Committee.

### **716 EFFECTIVE DATE**

This Agreement shall become binding and take effect upon the signing by five (5) states

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and their respective filing of a Certificate of Compliance reflecting compliance with the provisions hereof, including citations to applicable statutes, regulations or other authorities supporting such compliance.

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## ARTICLE VIII

### AMENDMENTS AND INTERPRETATIONS

#### 800 AMENDMENTS TO AGREEMENT

This Agreement may be amended, subject to approval, by three-fourths of the member states acting through the officials thereof authorized to enter into this Agreement. Prior to the vote, the member states acting jointly shall give public notice of the proposed amendment and opportunity for public comment.

#### 802 INTERPRETATIONS OF AGREEMENT

Matters involving interpretation of the Agreement may be brought before the member states acting jointly by any member state or any other person. The member states acting jointly are empowered to issue an interpretation of the Agreement, subject to approval by a majority of the voting states. All interpretations issued under this section shall be published in an appendix to the Agreement with footnotes under the appropriate sections of the Agreement.

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## ARTICLE IX

### RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

#### 900 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.

#### 902 RELATIONSHIP TO STATE LAW

No provision of this 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 this Agreement in a member state, whether adopted before, at, or after membership of a State, must be by the

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action of the member state. All member states remain subject to Article VI, State Entry and Withdrawal.

#### **904 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 this 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 this Agreement.

#### **906 FINAL DETERMINATIONS**

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

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### **ARTICLE X**

#### **REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT**

##### **1000 REVIEW OF COSTS AND BENEFITS**

Representatives of the member states 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 this Agreement and the proposed Streamlined Sales Tax System.

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### **APPENDIX A**

## **STREAMLINED SALES AND USE TAX AGREEMENT**

### **LETTER OF INTENT**

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**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; and

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

**NOW**, the undersigned representative hereby executes this intent to sign the attached draft of the Streamlined Sales and Use Tax Agreement upon enactment of the Uniform Sales and Use Tax Administration Act.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

STATE OF \_\_\_\_\_

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# Proposed Amendments to December 22 Sales and Use Tax Agreement and Act

## 1) Caps and Thresholds (Act)

**Issue:** The Act states (Section 6, Paragraph a) that caps and thresholds must be eliminated in the Agreement. The Agreement presently allows caps and thresholds to remain for certain items (motor vehicles, aircraft, and watercraft). The proposed amendment removes this inconsistency. Also, the amendment clarifies that these restrictions can be phased in over time.

### Act, Section 6, Paragraph a.

- a. Uniform State Rate. The Agreement must set restrictions to achieve over time more uniform state rates through the following:
  1. Limiting the number of state rates.
  2. ~~Eliminating~~ Limiting the application of maximums on the amount of state tax that is due on a transaction.
  3. ~~Eliminating~~ Limiting the application of thresholds on the application of state tax.

## 2) Base (Act)

**Issue:** The Act uses the phrase "Restricting and eliminating" in reference to the uniform base. The agreement was changed to allow for differences between the bases when restricted by federal law. There is concern that this is inconsistent with the term "eliminate".

### Act, Section 6, Paragraph f(1).

- f. Local Sales and Use Taxes. The Agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:
  1. ~~Restricting and eliminating~~ variances between the state and local tax bases.

## 3) Telecommunications

**Issue:** Language was inserted into the Agreement prior to the December 22 conference call to address a concern regarding the use of the Zip+4 system if an address based system was also available. Concerns have been raised that this language treats sellers covered under the Mobile Telecommunications Sourcing Act differently than other sellers. The language has been rewritten to address this concern. It stills fixes the original problem.

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**Agreement, Section 308, Paragraph c.**

The member states must relieve sellers and Certified Service Providers from liability to the State or local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or Certified Service Provider relying on erroneous data provided by a State on tax rates, boundaries, or taxing jurisdiction assignments. A State that provides an address-based system for assigning taxing jurisdictions pursuant to paragraph (b)(9) of this section or This relief provision shall also apply to a seller employing an address-based system for assigning taxing jurisdictions pursuant to the federal Mobile Telecommunications Sourcing Act will not be required to provide liability relief for errors resulting from reliance on the information provided by the State under the provisions of paragraph (b)(8) of this section. However, the relief provided by this paragraph is not available to a seller of services covered under the Mobile Telecommunications Sourcing Act that does not employ an address-based assignment system provided by the State pursuant to that Act.

**4) Zip Code Cleanup**

**Issue:** Clarification language related to Zip+4.

**Agreement, Section 308, Paragraph c.**

8. Provide and maintain a database that assigns each five (5) digit and nine (9) digit zip code within the 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 (9) digit zip code designation is not available for a street address or if a seller is unable to determine the nine (9) digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five (5) digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine (9) digit zip code designation by utilizing software approved by the member states that makes this designation from the street address and the five (5) digit zip code of the purchaser.
9. Participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, at 4 U.S.C.A. § 119. At a future date, member states acting jointly may allow a member state to require sellers registered under this agreement to use an address-based system provided by that member state. If any State develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in paragraph 8 of this section.

**5) Manufactured Homes**

**Issue:** States are faced with problems for manufactured homes regarding sourcing and local taxes that are similar to the problems identified for motor vehicles, aircraft and watercraft.

**Agreement, Sections 304 (b), 308 (a)(6), 308 (b)(10), 310 (I).**



Add the term “modular home, manufactured home or mobile home” to the lists of exceptions.