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an, Times, serif" size="3">**Streamlined sales tax merits state's support**

2:20 PM 10/12/03

A sales tax system that had standard definitions and procedures applied by every state and local government would ease headaches for consumers, businesses and tax collectors. That's why Wisconsin lawmakers should pass legislation to adopt the changes proposed by the Streamlined Sales Tax Project. <

The goal of the Streamlined Sales Tax Project is to standardize, simplify and modernize the collection and administration of sales and use taxes, now subject to state-by-state variations. It also would smooth the way for the systematic collection of taxes on Internet and catalog sales, which would help Wisconsin collect an estimated \$150 million in sales taxes that now go unpaid each year. <

The most significant change proposed by the project is in the definitions of items subject to sales and use taxes. Under the current patchwork, an item that one state exempts from sales tax as "food" might be taxable in another state that leaves the same item off its list of "food." The same variations exist in medical devices, clothing and other items. <

Under the streamlined system, each state would continue to control what categories to tax or make exempt, but the definitions of what belongs in each category would be standard. In other words, if popcorn is "food" in one state, it would be "food" in all states. <

In Wisconsin the new definitions would save consumers about \$5.3 million a year. That's because some items now taxed, from licorice to diabetic patient supplies, would move into categories where they would be exempt from sales tax. That savings for consumers would be a cost to the state treasury, but a good bargain nonetheless when you consider the nationwide benefits of less red tape and less confusion. <

Furthermore, the streamlined, standardized system offers an opportunity to eliminate unfairness and, ultimately, to boost state revenue by collecting sales taxes that now escape collection. <

The lack of standard definitions has hindered the systematic collection of sales taxes on Internet and catalog sales, costing states hundreds of millions of dollars. It's estimated that Wisconsin loses \$150 million in sales taxes each year because out-of-state Internet and catalog sellers do not collect on products shipped to Wisconsin residents, even though a Wisconsin store would be required to charge a sales tax on the same item. <

The problem is that federal law prohibits any state from requiring out-of-

state sellers to collect sales taxes. <

Congress could change the law, but such a change would demand that sellers go through the nightmare of figuring out what items are subject to sales tax in which states. The simplified system would end that nightmare and make it more likely that Congress would change the law so that Internet and catalog retailers are treated the same as brick-and-mortar retail stores. <

Wisconsin has helped to shape the streamlining project. Wisconsin is one of 39 states participating, along with the District of Columbia. An administrator in the Wisconsin Department of Revenue, Diane Hardt, is co-chair of the project's steering committee. <

Now it's up to the Legislature to pass Assembly Bill 547, which would implement the proposed changes. It's time for a streamlined sales tax system.

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Gilbert, Melissa

From: Rep.Nass
Sent: Tuesday, November 18, 2003 10:47 AM
To: *Legislative Assembly Republicans; *Legislative Senate Republicans
Subject: Relating to AB 547/SB 267 - Streamlined Sales Tax Project - Dick Arney and Citizens for a Sound Economy Oppose Project

Below is an Op-Ed piece from Former House Republican Leader Dick Arney, co-chairman of the Citizens for a Sound Economy, an anti-tax advocacy group. Mr. Arney believes the Streamlined Sales Tax Project is about government grabbing more tax dollars from consumers. He also raises legitimate privacy concerns regarding the consumer-tracking system that would be put into place as a part of this project.

Rep. Steve Nass

March 12, 2003

Streamlining the Path to Your Wallet

The Streamlined Sales Tax Project will cost taxpayers money and privacy.

By: Dick Arney

This op-ed originally ran in USA Today on March 10, 2003

During the American Revolution, patriots fought for the principle of "No Taxation Without Representation." Today, a majority of state governors are fighting for the Streamlined Sales Tax Project (SSTP), which turns our cherished principle on its head.

Why should a small business in Maine be forced to collect taxes for the state of California? The Supreme Court was right when it ruled that it is too heavy a burden to force small businesses to collect sales taxes for America's 7,500 different tax jurisdictions.

Moreover, the Constitution makes it quite clear that only Congress can regulate inter state trade. For example, an online bookseller in Maine doesn't get to vote for the tax laws in California, and it doesn't use any government services in California. That's taxation without representation. Interstate sales taxes are not just an "undue burden" for businesses, they are inherently wrong.

The SSTP has one thing in mind: taking more money from you, the American consumer. Under the banner of "simplification," the SSTP would create a new mechanism to collect online sales taxes across multiple states. The fight already is underway in a number of state capitols to launch the SSTP.

The SSTP threatens to become a de facto national sales tax. As more states join the system, it would end the competition between states that helps keep sales taxes in check. It would be impossible for states to have an innovative tax regime different from the SSTP. It's also conceivable that the federal government would want its own share of the spoils someday. Do we really think Congress would be able to keep its hands off of such a complicated cash cow as the SSTP?

Just as disturbing is the elaborate consumer-tracking system the governors want to put into place. The SSTP must track when, where and what you're buying online. The SSTP promises it won't track your personal information, but even so it still would create a massive new database, and that data would be extremely valuable. Who is going to control and secure all of this information?

Moving to the SSTP sales-tax scheme is not the answer to the Internet tax debate. If you care about freedom and economic growth, you'll agree that the SSTP should be stopped cold.

Former House Republican leader Dick Armey of Texas is co-chairman of Citizens for a Sound Economy, an anti-tax advocacy group.

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an, Times, serif" size="3">**Time to pay up on Internet sales**

3:00 PM 2/02/03

Those clothes you ordered last spring from a catalog and those books and compact discs you bought for Christmas from an Internet retailer - you probably didn't pay the sales tax on those purchases, did you? And what you probably haven't yet come to grips with is: You owe the sales tax, anyway.

Now is the time to pay up, as you fill out your state income tax return.

On your state tax form you'll find a line - line 26 on income tax form 1A - that asks you for the sales taxes due on purchases from out-of-state businesses, including Internet and mail-order retailers, which did not charge the sales tax at the time of purchase. It's your obligation to figure the sales tax at 5.5 percent in most counties, including Dane, on the purchases you have made during the year.

If you didn't pay up in previous years, you weren't alone. State officials estimate that Wisconsin taxpayers should have reported \$255 million in sales taxes for Internet and mail-order purchases last year, but we paid only \$1.45 million. We got away with it because there is no enforcement mechanism for sales tax payments on Internet and mail-order purchases.

That amounts to a loss of nearly \$254 million, a sum sorely needed by a state facing a \$452 million deficit by the close of the fiscal year ending June 30.

You can manufacture lots of excuses for failing to comply, including: "I didn't realize what that line on the tax form meant;" "I thought the law allowed Internet sales to be free of sales tax;" "I didn't keep track of what I bought so I don't know what I owe;" or "If nobody else is paying, I'm not paying."

But no excuse absolves you from your obligation to pay.

Consider that you are costing the state money that must be made up either in cuts to programs or in tax increases.

Consider also that when you fail to pay the sales tax for a mail-order or Internet purchase, you put your local retail stores at a disadvantage because they are required to collect the sales tax. You are, in essence, permitting the mail-order or Internet retailer to appear to sell at a discount, only because you are failing to pay the sales tax.

States are working together to establish a standardized sales tax collection system that would cover Internet and mail-order purchases.

Meantime, it's your duty to figure your own tax, and pay up.

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A Blueprint for **STREAMLINING**

SALES TAX

An agreement on how to simplify sales taxes across state lines has been reached. Now it's up to legislatures to concur.

By Carl Tubbesing

“We’d been in so many hotels over the past two or three years,” remembers Oklahoma Senator Angela Monson. “The same people, the same hollow square table, the same milling around, the same hallway conversations.



Senator
Angela Monson
Oklahoma

“Then, that morning last November, we took the vote and it was over. For me, at least, it took a few minutes to sink in. All of these people, from all of these states had just agreed to reform their sales tax systems. No one had ever done that before. Wholesale tax reform even in one state is rare. Doing it in 10 or 20 or more states at the same time is absolutely unprecedented. But we had done it—or, at least, had taken a gigantic step in that direction,” she says.

What Monson and 99 other state legislators, legislative staff, state revenue officials

Carl Tubbesing is NCSL's deputy executive director. Neal Osten, NCSL's expert on the Streamlined Sales Tax Agreement, contributed to this story.

and representatives of the private sector did was to vote to approve the Streamlined Sales and Use Tax Agreement. This action of the group known as the Streamlined Sales Tax Implementing States culminated a critical phase in a three-year project to allow states to collect taxes on remote sales—for example, Internet sales. Their decision sets the stage for consideration of the streamlined sales tax agreement during the 2003 legislative sessions.

“I was rushing through the Chicago airport following the meeting,” continues Senator Monson, who now co-chairs the implementing states group, “and the enormity of what we had accomplished hit me. State officials had just approved a drastic reform of state sales tax systems.

“After a few seconds of euphoria, though, I realized that the first three years were easy. Now comes the really hard part—actually implementing the agreement in state legislatures,” she says.

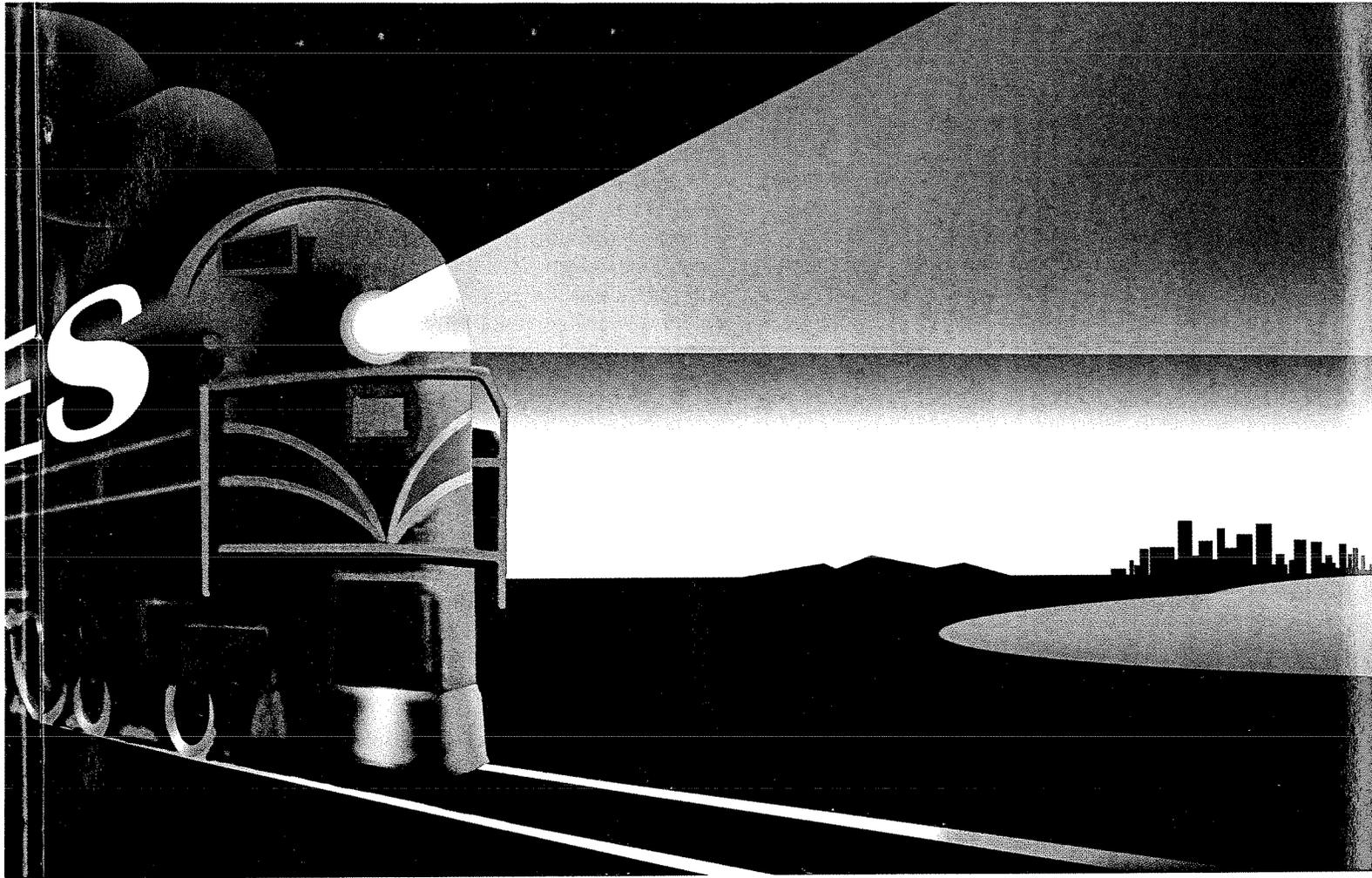
Forty-five states and the District of Columbia use sales taxes. No two systems, though, are exactly alike. They are, in fact, quite complex. The most obvious variation is in

rates. The sales tax rate in Hawaii and several other states is 4.0 percent. In Missouri, though, the state rate is 4.225 percent. Rhode Island and Mississippi have a 7 percent rate. In a dozen states, there is only one rate. In the others, there are local sales taxes in addition to the state rate.

Some states tax food and drugs; others don't. In some states, snacks—like pretzels and potato chips—are not considered food, so they are taxed. In others, snacks are defined as food, so they are exempt. Some states have used sales tax holidays, for example, on children's clothing for a week or two before school begins in the fall. States also use many different sales tax return forms and employ various audit procedures for retailers.

SUPREME COURT CASES

It is this complexity that caused the U.S. Supreme Court, in two important cases, to rule that a state cannot require an out-of-state retailer to collect the sales tax on an item sold to one of its residents. Utah cannot force L.L. Bean, a catalogue and Internet seller based in Maine, to collect the



Utah sales tax when a Utah resident buys a pair of boots online. The consumer owes the tax, according to the Court, but the Utah revenue department cannot force L.L. Bean to collect it and send it to the state. University of Tennessee economist Bill Fox estimates that, by 2006, states will lose \$45 billion a year in uncollected taxes on Internet sales.

The National Conference of State Legislatures and other state and local organizations have worked since the late 1980s to reverse or mitigate the effects of the two Supreme Court decisions—first, *National Bellas Hess vs. Illinois* and later *Quill vs. North Dakota*.

These joint efforts initially, but unsuccessfully, sought relief in Congress. More recently, they have focused on interstate cooperation in simplifying state sales taxes.

NCSL formed a task force on taxation of electronic commerce in November 1998. Co-chaired by Illinois



Senator Steve Rauschenberger
Oklahoma

Senator Steve Rauschenberger and Tennessee Representative Matt Kisber, the task force developed the model legislation in January 2000 that led to creation of the Streamlined Sales Tax Implementing States.

The group is composed of representatives from 34 states and the District of Columbia that passed model legislation during their 2001 and 2002 sessions. The implementing states met monthly for a year to hammer out a comprehensive proposal for simplifying state and local sales taxes. Legislatures began considering this agreement last month.

VOLUNTARY SYSTEM

“The key to the interstate agreement,” says Senator Rauschenberger, “is that it is voluntary. States will voluntarily join by adjusting their sales tax laws. Remote sellers—companies that make sales over the Internet or through catalogues—will volunteer to collect the sales tax for the states that have simplified their sales tax systems.”

To participate, state sales tax statutes must conform with the provisions of the agreement. The hallmark of the agreement is its emphasis on uniformity, standardization

and simplification.

“Sales tax systems vary because states vary,” says Texas Senator Leticia Van de Putte, new co-chair of NCSL’s task force. “When legislatures define food in a certain way or set the rate at a certain level, it’s a decision not made in a vacuum. They are reflecting the political forces and the political cultures in their states. What we have to do now—to respond to technology, and to the national and international marketplace—is forgo this complexity and make our sales taxes more uniform and simpler.”



Senator Leticia Van de Putte
Texas

30 STANDARDS

The agreement includes at least 30 standards that states will have to meet to participate in the system. These provisions cover the major elements of state sales tax laws.

Some of the greatest complexities in sales tax laws occur in how they define items subject to the tax. When, for example, is a candy

WHAT THE CRITICS SAY

Illinois Senator Steve Rauschenberger has been co-chair of NCSL's task force on taxation of electronic commerce since it was created in 1998. Although he is one of the country's staunchest advocates for the streamlined sales tax agreement, he also recognizes that it has critics who have raised important arguments against it. Senator Rauschenberger responds here to some of the major concerns.

Q. How do you respond to critics who say this state effort to collect sales and use taxes on Internet sales is really just a way of imposing a new tax on consumers?

A. Of course, it isn't a new tax. The U.S. Supreme Court acknowledges that consumers owe the tax whether they walk down the street to buy something or purchase it from an out-of-state company. What the Court says is that states cannot force the out-of-state retailer to collect the tax for them, because the cost of doing that is simply too high. The streamlined agreement takes that as a cue. We've drastically reduced the complexity in sales tax systems and, therefore, have minimized the burden on the sellers.

Q. Is it possible that the agreement will encourage states to expand their sales tax base?

A. There is language in the agreement saying that it should not be interpreted as endorsing taxation of a particular item. It doesn't say you have to tax food. It just says if you do, do it this way. That could mean a slight expansion of the base in some states. But the intention is not to expand the base or create revenue. The intention is to make these sales tax systems simpler. It is one of countless trade-offs the implementing states agreed on.

Q. Some economists note there is a value in tax competition among states. Won't the agreement's emphasis on uniformity eliminate this competition?

A. The most important part of tax competition among states is about rates. If my state raises the sales tax rate, does that mean consumers will go to Wisconsin to buy a DVD player? Would a company view that as contributing to an unfriendly business climate? Those are legitimate concerns, but the streamlined agreement should not have an effect on that. It doesn't say that sales tax rates have to be uniform from state to state. The agreement has on-off switches. There's no reason to think that a state that has had a switch off for decades suddenly will turn it on. The lobbyists who worked to turn it off before will work to keep it off when the legislature approves the agreement.

Q. Will the agreement hurt the five states that do not have a sales tax?

A. No. According to the agreement, an out-of-state company collects the tax of the state of the consumer. If someone in Oregon, which does not have a sales tax, buys that proverbial pair of boots from L.L. Bean, the company would not collect a tax. A business in Oregon, however, that sells on-line would have to collect the tax for Missouri, say, if a Missourian bought something from that Oregon company.

bar not food? Thirty states have chosen not to tax food. However, many of those states tax candy. These states currently use different definitions of candy. Some tax Twix bars, which contain flour; others do not. The proposed agreement says what candy is—and, by the way, excludes Twix bars from the definition. The agreement does not tell states they must or must not tax candy. In fact, it goes out of its way to say that the agreement “shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service.” However, if a state chooses to tax an item—say, candy—then it must use the agreement's definition of candy.

The agreement does not say whether a state should tax drugs. If the state elects to tax drugs, then it must use the agreement's definition. It does not say clothing should be taxed, but it lists what is to be considered clothing. Belts, for example, are clothes, but belt buckles, sold separately, are not.

Several of the agreement's provisions have this “on-off” feature. The agreement does not tell a state it can or cannot use sales tax holidays. If a state elects to use sales tax holidays, though, it must comply with several requirements established in the agreement. For example, it must provide notice to retailers at least 60 days before the first day of the quarter in which the holiday will take place.

SOME REQUIREMENTS STRICTER

Many of the agreement's requirements are not so permissive. For example, a state and its local jurisdictions must tax the same things. In tax talk, that means they must have the same base. (The exception to this is an allowance the agreement makes for states, such as Illinois and Missouri that currently allow local jurisdictions to tax food, even though the state does not.) Sales tax administration will have to be done by a state body.

The agreement establishes requirements for uniform tax returns and for remitting funds to the state from sellers. It provides for greater notice to sellers concerning rate changes and changes in local tax jurisdiction boundaries. It has a clearly defined set of requirements for sourcing a purchase—in other words, for determining which state or local sales tax applies. It has a detailed section on deducting for bad debts and another on protecting privacy and confidentiality.

Tennessee Senator Bill Clabough, a member of NCSL's task force and of the implementing states, says that the agreement is the “result of many large and small compromises.

“Much of the time,” he says, “the tensions were between state revenue officials and legislators. The tax administrators, to their credit, were trying to construct an ideal system. The legislators were constantly thinking about how the system would work in their state and what it would take to get it passed.”

The lawmakers who helped develop the agreement are strong advocates for it and are working to get it passed, Rauschenberger says. “NCSL just completed a survey of the legislators on its task force and those involved with the implementing states. All of them said they were introducing the agreement in their states and were working to get it approved.”



Senator
Bill Clabough
Tennessee

IT'S THE MONEY

The agreement's advocates offer different reasons for their support. Some start with the money. "It's really as simple and as complex as the money," says former Ohio Senate President Richard Finan. "We estimate that Ohio lost \$448 million in sales tax revenue last year because of Internet sales. We are a fiscally conservative state with a fiscally conservative legislature. But we also have services to provide, and we have to balance our budget. Losing \$448 million in taxes that are legally owed means we either have to cut services—education, health care, child care, economic development—or find the revenues somewhere else."

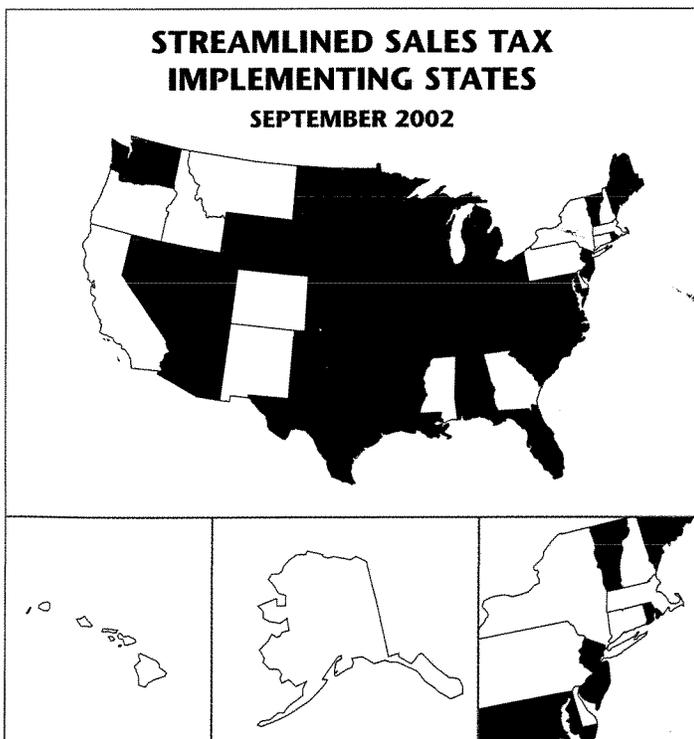
Rauschenberger puts the money argument into federalism terms. "For 45 states, the sales tax is a substantial portion of the revenue mix. The erosion of the sales tax because of remote sales weakens state governments and threatens their sovereignty. The consequence of letting a major revenue source become obsolete is that the states will revert to being dependents of the federal government."

Oklahoma Senator Monson adds that devolution makes the need for resources even more imperative. "Throughout the 1990s, state governments assumed responsibilities for many programs, such as welfare and children's health. Most state legislators felt this was the right thing to do—the right thing for federalism and the right thing for our constituents. Those responsibilities take resources. For many of us, the sales tax is a significant source of revenue—one we need to protect to make devolution successful."

FAIRNESS FOR MERCHANTS

Some supporters of the agreement point also to fairness. They argue that Main Street retailers are at a disadvantage because they are required to collect sales taxes and remote sellers are not.

Maureen Riehl, vice president for the National Retail Federation, says the Supreme Court decisions require retailers with stores in a



OUTLINE OF THE STREAMLINED SALES AND USE TAX AGREEMENT

The interstate agreement that has been sent to legislatures for consideration is a comprehensive and detailed approach for achieving uniformity and simplification in state sales taxes. The agreement is not a model act. Rather, it is a set of standards and provisions with which a state must comply to enter the voluntary system. Its major provisions are:

- ◆ Central administration of state and local sales and use taxes.
- ◆ Limits on state and local rates and rate changes.
- ◆ Limits on state and local rates after Dec. 31, 2005.
- ◆ Local jurisdictions limited to a single rate.
- ◆ States limited to a single general rate with an option of a single additional rate that could be zero on food and drugs.
- ◆ Central seller registration.
- ◆ Uniform sourcing rules.
- ◆ Telecommunications sourcing.
- ◆ Uniform procedures for exemptions.
- ◆ Uniform tax returns.
- ◆ Uniform definition of food and related items.
- ◆ Uniform definition for clothing.
- ◆ Uniform administrative definitions.
- ◆ Uniform definition for tangible personal property.
- ◆ Uniform definition for software.
- ◆ Uniform definition for drugs.
- ◆ Uniform definition for medical equipment.
- ◆ Uniform definition for leasing.
- ◆ Standardization of sales tax holidays.
- ◆ Elimination of caps and thresholds after Dec. 31, 2005.
- ◆ Privacy clarifications.
- ◆ Privacy protections.
- ◆ Amnesty for participating voluntary sellers.
- ◆ Outline of models for participation through technology.
- ◆ Outline for monetary allowances based on technology models.
- ◆ Uniform rounding rule.
- ◆ Customer remedy procedures.
- ◆ Requirements for direct pay procedures.
- ◆ Provisions for governance of the agreement that ensure legislative participation, certainty for sellers and procedures for resolving disputes with nonbinding, third-party arbitration.

state to collect the tax. "That means," she says, "that big retailers like Sears and Target—as well as mom-and-pop stores—have the playing field tilted against them. They're collecting sales taxes, and Internet sellers are not. The so-called brick and mortar stores don't have anything against Internet sellers. In fact, many have their own Internet operations. It's just a question of being treated fairly."

Consideration of the agreement in state legislatures is generating attention from various interests on both sides of the question. Among the supporters are local governments, traditional retailers, telecommunications companies, shopping centers and realtors. Lined up in opposition are anti-tax groups and Internet sellers.

YOU CAN'T TELL THE PLAYERS WITHOUT A SCORECARD

Numerous public and private groups have been involved in development of the Streamlined Sales and Use Tax Agreement. A thumbnail description of them and a listing of their Web sites are:

- ◆ Streamlined Sales Tax Implementing States. Thirty-four states and the District of Columbia passed model legislation that authorized them to develop an interstate agreement to simplify state sales taxes. State legislators, revenue officials and private sector representatives were appointed to the implementing states. Thirty states and the District of Columbia voted unanimously to approve the Streamlined Sales and Use Tax Agreement in November 2002. (Two of the implementing states did not send representatives to the meeting and officials from two other states abstained.)

- ◆ NCSL Task Force On State and Local Taxation of Telecommunications and Electronic Commerce. NCSL's Executive Committee created this task force at the end of 1998 to provide a forum for legislators and staff interested in the issues associated with sales and telecommunications taxes. It has overseen NCSL's work on these issues ever since. www.ncsl.org/programs/fiscal/tctelcom.htm

- ◆ Streamlined Sales Tax Project (SSTP). NCSL's task force endorsed model legislation in January 2000 that directed state revenue departments to enter into multistate discussions to simplify sales taxes. Thirty-two states joined SSTP. The project's product—and a similar one developed by NCSL's task force—led to additional model legislation that created the implementing states group. www.geocities.com/streamlined2000/

- ◆ National Retail Federation. An association of major retailers, including Sears, Target, Target, JC Penney and Staples, that has supported development of the streamlined agreement. www.salestaxfairness.com/index.htm

- ◆ Council on State Taxation. Created in 1969 through the Council of State Chambers of Commerce, COST comprises more than 500 companies that do business across state lines. A COST staff member serves on the implementing state's group as a representative of the District of Columbia. www.statetax.org/index.html

- ◆ E-Fairness Coalition. This coalition includes other trade associations, such as the International Council of Shopping Centers and the National Realtors Association, and certain companies, including WalMart and Radio Shack. www.e-fairness.org

- ◆ Federation of Tax Administrators. An association of state revenue department officials. It has provided staff support to the Streamlined Sales Tax Project and the implementing states. www.taxadmin.org/

- ◆ Multistate Tax Commission. An organization of state tax officials that has provided staff resources to the Streamlined Sales Tax Project and the implementing states. www.mtc.gov/

VARIED SUPPORTERS

Mayors, county executives and other local officials support the agreement because, like the states, local governments have seen sales tax revenues eroded by remote sales. They believe declining revenues force them to reduce services or become more reliant on property taxes, the public's least favorite tax. Traditional retailers—family companies selling shoes on Main Street or office supply chain stores such

as Staples—are among the agreement's strongest advocates, says the retail federation's Riehl. They see it leading to fairer competition between companies that collect the sales tax and those that, so far, have not. Shopping center owners want to make sure the retailers who rent space are healthy and are not put out of business by unfair competition from Internet sellers. Realtors have the same motivation. They want to make sure there are retailers to rent or buy shop space along Main Street, Broadway or Park Avenue. Telecommunications companies, including AT&T, Verizon and Bell South, are in favor of the agreement, primarily because it simplifies certain kinds of telecommunications taxes.

OPPOSITION FROM THE NET

Opponents in the private sector primarily are so-called "pure" Internet retailers—companies that sell only over the Internet and have a physical presence in only one state. (The Supreme Court rulings require sellers to collect sales taxes in states where they have "nexus.") Although Amazon.com, a large retailer that sells only over the Internet, has not opposed the agreement, many other pure Internet retailers do. They worry about losing a competitive advantage. Some, especially smaller companies, are concerned about the cost of software they would need to calculate sales taxes owed.

The antagonism of anti-tax groups, such as the National Taxpayers Union, is consistent with their philosophical opposition to taxes. They express concern about the burden placed on Internet sellers to collect the tax and the potential for loss of tax competition among states.

10 STATES MUST ADOPT

"No one expected the states to succeed in developing a streamlined system," says Rauschenberger. Like Monson, though, he notes that the hard work is just beginning. The agreement does not take effect until 10 states representing 20 percent of the population have adopted it. "A few states need to make only minor adjustments to comply," he says. "They should be fairly easy. It's some of the bigger states, with complex sales tax systems, that will struggle with this."

He's not sure how the current fiscal crises will affect consideration of the streamlined agreement. "Our budget problems could make many legislators and governors more supportive of these reforms. On the other hand, because the system is voluntary, no one is going to see a lot of immediate revenue from this. I also worry that the budget crises are so severe that legislatures will not really have time to focus on anything else this year."

What happens when the agreement begins to operate? Senator Monson outlines three scenarios. "One is that the interstate agreement proves to be successful as a voluntary system. Over time, more states would join and more companies would volunteer to participate. A second is that Congress would use the streamlined agreement as the basis for federal legislation that would authorize states to collect taxes on out-of-state sales. And some folks believe that the agreement, by reducing the burden on interstate commerce, could persuade the Supreme Court to overturn its rulings in *Bellas Hess* and *Quill*.

"Those options are all down the road a bit," she says. "Right now, the important thing is to make sure that this critical experiment in cooperative federalism continues and that legislatures and governors give it fair and thorough consideration over the coming months."

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STREAMLINED SALES AND

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Adopted November 12, 2002

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ARTICLE I
PURPOSE AND PRINCIPLE

Section 101: TITLE

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

Section 102: FUNDAMENTAL PURPOSE

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

- A. State level administration of sales and use tax collections.
- B. Uniformity in the state and local tax bases.
- C. Uniformity of major tax base definitions.
- D. Central, electronic registration system for all member states.
- E. Simplification of state and local tax rates.
- F. Uniform sourcing rules for all taxable transactions.
- G. Simplified administration of exemptions.
- H. Simplified tax returns.
- I. Simplification of tax remittances.
- J. Protection of consumer privacy.

Section 103: TAXING AUTHORITY PRESERVED

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

1 **Section 104: DEFINED TERMS**

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

5
6 An alphabetical list of all the terms defined in the Agreement and their location in the Agreement
7 is found in Appendix B of this Agreement, the Index of Definitions. Terms defined for use
8 within this Agreement are set out in Article II of the Agreement. Many of the uniform definitions
9 for application in the sales and use tax laws of the member states are set out in Appendix C of
10 this Agreement, the Library of Definitions. Definitions that are not set out in Appendix C are
11 defined when applied in a particular section of the Agreement and are set out in that section of
12 the Agreement. The appendices have the same effect as the Articles in the Agreement.

13
14 **Section 105: TREATMENT OF VENDING MACHINES**

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

ARTICLE II
DEFINITIONS

The following definitions apply in this Agreement:

Section 201: AGENT

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

Section 202: CERTIFIED AUTOMATED SYSTEM (CAS)

Software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

Section 203: CERTIFIED SERVICE PROVIDER (CSP)

An agent certified under the Agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

Section 204: ENTITY-BASED EXEMPTION

An exemption based on who purchases the product or who sells the product.

Section 205: MODEL 1 SELLER

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

Section 206: MODEL 2 SELLER

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

Section 207: MODEL 3 SELLER

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

Section 208: PERSON

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

1 **Section 209: PRODUCT-BASED EXEMPTION**

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

4 **Section 210: PURCHASER**

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

6 **Section 211: REGISTERED UNDER THIS AGREEMENT**

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

9 **Section 212: SELLER**

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

11 **Section 213: STATE**

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

13 **Section 214: USE-BASED EXEMPTION**

14 An exemption based on the purchaser's use of the product.

1 ARTICLE III
2 REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE
3
4

5 **Section 301: STATE LEVEL ADMINISTRATION**

6 Each member state shall provide state level administration of sales and use taxes. The state level
7 administration may be performed by a member state's Tax Commission, Department of Revenue,
8 or any other single entity designated by state law. Sellers are only required to register with, file
9 returns with, and remit funds to the state level authority. Each member state shall provide for
10 collection of any local taxes and distribution of them to the appropriate taxing jurisdictions.
11 Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the
12 sellers registered under the Agreement for that state's tax and the tax of its local jurisdictions,
13 and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered
14 under the Agreement.
15

16 **Section 302: STATE AND LOCAL TAX BASES**

17 Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax,
18 all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the
19 tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited
20 by federal law. This section does not apply to sales or use taxes levied on the retail sale or
21 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
22 homes.
23

24 **Section 303: SELLER REGISTRATION**

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

- 27 A. A seller registering under the Agreement is registered in each of the member states.
28 B. The member states agree not to require the payment of any registration fees or other
29 charges for a seller to register in a state in which the seller has no legal requirement to
30 register.

- 1 C. A written signature from the seller is not required.
- 2 D. An agent may register a seller under uniform procedures adopted by the member states.
- 3 E. A seller may cancel its registration under the system at any time under uniform
- 4 procedures adopted by the governing board. Cancellation does not relieve the seller of its
- 5 liability for remitting to the proper states any taxes collected.

6

7 **Section 304: NOTICE FOR STATE TAX CHANGES**

- 8 A. Each member state shall lessen the difficulties faced by sellers when there is a change in
- 9 a state sales or use tax rate or base by making a reasonable effort to do all of the
- 10 following:
 - 11 1. Provide sellers with as much advance notice as practicable of a rate change.
 - 12 2. Limit the effective date of a rate change to the first day of a calendar quarter.
 - 13 3. Notify sellers of legislative changes in the tax base and amendments to sales and use
 - 14 tax rules and regulations.
- 15 B. Failure of a seller to receive notice or failure of a member state to provide notice or limit
- 16 the effective date of a rate change shall not relieve the seller of its obligation to collect
- 17 sales or use taxes for that member state.

18

19 **Section 305: LOCAL RATE AND BOUNDARY CHANGES**

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

- 21 A. Provide that local rate changes will be effective only on the first day of a calendar
- 22 quarter after a minimum of sixty days' notice to sellers.
- 23 B. Apply local sales tax rate changes to purchases from printed catalogs wherein the
- 24 purchaser computed the tax based upon local tax rates published in the catalog only on
- 25 the first day of a calendar quarter after a minimum of one hundred twenty days' notice to
- 26 sellers.
- 27 C. For sales and use tax purposes only, apply local jurisdiction boundary changes only on
- 28 the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

- 1 D. Provide and maintain a database that describes boundary changes for all taxing
2 jurisdictions. This database shall include a description of the change and the effective
3 date of the change for sales and use tax purposes.
- 4 E. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions
5 levying taxes within the state. For the identification of states, counties, cities, and
6 parishes, codes corresponding to the rates must be provided according to Federal
7 Information Processing Standards (FIPS) as developed by the National Institute of
8 Standards and Technology. For the identification of all other jurisdictions, codes
9 corresponding to the rates must be in the format determined by the governing board.
- 10 F. Provide and maintain a database that assigns each five digit and nine digit zip code
11 within a member state to the proper tax rates and jurisdictions. The state must apply the
12 lowest combined tax rate imposed in the zip code area if the area includes more than one
13 tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not
14 available for a street address or if a seller is unable to determine the nine digit zip code
15 designation of a purchaser after exercising due diligence to determine the designation,
16 the seller may apply the rate for the five digit zip code area. For the purposes of this
17 section, there is a rebuttable presumption that a seller has exercised due diligence if the
18 seller has attempted to determine the nine digit zip code designation by utilizing
19 software approved by the governing board that makes this designation from the street
20 address and the five digit zip code of the purchaser.
- 21 G. Participate with other member states in the development of an address-based system for
22 assigning taxing jurisdictions. The system must meet the requirements developed
23 pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sec. 119).
24 The governing board may allow a member state to require sellers that register under this
25 Agreement to use an address-based system provided by that member state. If any
26 member state develops an address-based assignment system pursuant to the Mobile
27 Telecommunications Sourcing Act, a seller may use that system in place of the system
28 provided for in subsection (F) of this section.
- 29

1 **Section 306: RELIEF FROM CERTAIN LIABILITY**

2 Each member state shall relieve sellers and CSPs from liability to the member state and local
3 jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting
4 from the seller or CSP relying on erroneous data provided by a member state on tax rates,
5 boundaries, or taxing jurisdiction assignments. A member state that provides an address-based
6 system for assigning taxing jurisdictions pursuant to Section 305, subsection (G) or pursuant to
7 the federal Mobile Telecommunications Sourcing Act will not be required to provide liability
8 relief for errors resulting from the reliance on the information provided by the member state
9 under the provisions of Section 305, subsection (F).

10
11 **Section 307: DATABASE REQUIREMENTS AND EXCEPTIONS**

- 12 A. The electronic databases provided for in Section 305, subsections (D), (E), (F), and (G)
13 shall be in a downloadable format approved by the governing board.
- 14 B. The provisions of Section 305, subsections (F) and (G) do not apply when the purchased
15 product is received by the purchaser at the business location of the seller.
- 16 C. The databases provided by Section 305, subsections (D), (E), and (F) are not a
17 requirement of a state prior to entering into the Agreement. The governing board shall
18 establish the effective dates for availability and use of the databases.

19
20 **Section 308: STATE AND LOCAL TAX RATES**

- 21 A. No member state shall have multiple state sales and use tax rates on items of personal
22 property or services after December 31, 2005, except that a member state may impose a
23 single additional rate, which may be zero, on food and food ingredients and drugs as
24 defined by state law pursuant to the Agreement.
- 25 B. A member state that has local jurisdictions that levy a sales or use tax shall not have
26 more than one local sales tax rate or more than one local use tax rate per local
27 jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates
28 must be identical.
- 29 C. The provisions of this section do not apply to sales or use taxes levied on electricity,
30 piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail

1 sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
2 homes, or mobile homes.

3
4 **Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS**
5 **FROM THE RULES**

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

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

- 14 1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or
15 mobile homes. These items must be sourced according to the requirements of each
16 member state.
- 17 2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or
18 aircraft that do not qualify as transportation equipment, as defined in Section 310,
19 subsection (D). The retail sale of these items shall be sourced according to the
20 requirements of each member state, and the lease or rental of these items must be
21 sourced according to Section 310, subsection (C).
- 22 3. Telecommunications services, as set out in Section 315, shall be sourced in
23 accordance with Section 314.

24
25 **Section 310: GENERAL SOURCING RULES**

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

- 27 1. When the product is received by the purchaser at a business location of the seller, the
28 sale is sourced to that business location.
- 29 2. When the product is not received by the purchaser at a business location of the seller,
30 the sale is sourced to the location where receipt by the purchaser (or the purchaser's

1 donee, designated as such by the purchaser) occurs, including the location indicated
2 by instructions for delivery to the purchaser (or donee), known to the seller.

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

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

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

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

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

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

- 1 3. This subsection does not affect the imposition or computation of sales or use tax on
2 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
3 property for lease.
- 4 C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify
5 as transportation equipment, as defined in subsection (D), shall be sourced as follows:
- 6 1. For a lease or rental that requires recurring periodic payments, each periodic payment
7 is sourced to the primary property location. The primary property location shall be as
8 indicated by an address for the property provided by the lessee that is available to the
9 lessor from its records maintained in the ordinary course of business, when use of this
10 address does not constitute bad faith. This location shall not be altered by intermittent
11 use at different locations.
- 12 2. For a lease or rental that does not require recurring periodic payments, the payment is
13 sourced the same as a retail sale in accordance with the provisions of subsection (A).
- 14 3. This subsection does not affect the imposition or computation of sales or use tax on
15 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
16 property for lease.
- 17 D. The retail sale, including lease or rental, of transportation equipment shall be sourced the
18 same as a retail sale in accordance with the provisions of subsection (A),
19 notwithstanding the exclusion of lease or rental in subsection (A). "Transportation
20 equipment" means any of the following:
- 21 1. Locomotives and railcars that are utilized for the carriage of persons or property in
22 interstate commerce.
- 23 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001
24 pounds or greater, trailers, semi-trailers, or passenger buses that are:
- 25 a. Registered through the International Registration Plan; and
- 26 b. Operated under authority of a carrier authorized and certificated by the U.S.
27 Department of Transportation or another federal authority to engage in the
28 carriage of persons or property in interstate commerce.

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

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

6
7 **Section 311: GENERAL SOURCING DEFINITIONS**

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

9 A. Taking possession of tangible personal property,

10 B. Making first use of services, or

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

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

14
15 **Section 312: MULTIPLE POINTS OF USE**

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

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

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

28 C. The MPU Exemption Form will remain in effect for all future sales by the seller to the
29 purchaser (except as to the subsequent sale's specific apportionment that is governed by

1 the principle of subsection (B) and the facts existing at the time of the sale) until it is
2 revoked in writing.

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

7
8 **Section 313: DIRECT MAIL SOURCING**

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

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

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

- 24 B. If the purchaser of direct mail does not have a direct pay permit and does not provide the
25 seller with either a Direct Mail Form or delivery information, as required by subsection
26 (A) of this section, the seller shall collect the tax according to Section 310, subsection
27 (A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax
28 to any state to which the direct mail is delivered.

1 C. If a purchaser of direct mail provides the seller with documentation of direct pay
2 authority, the purchaser shall not be required to provide a Direct Mail Form or delivery
3 information to the seller.
4

5 **Section 314: TELECOMMUNICATION SOURCING RULE**

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

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

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

16 1. A sale of mobile telecommunications services other than air-to-ground radiotelephone
17 service and prepaid calling service, is sourced to the customer's place of primary use
18 as required by the Mobile Telecommunications Sourcing Act.

19 2. A sale of post-paid calling service is sourced to the origination point of the
20 telecommunications signal as first identified by either (i) the seller's
21 telecommunications system, or (ii) information received by the seller from its service
22 provider, where the system used to transport such signals is not that of the seller.

23 3. A sale of prepaid calling service is sourced in accordance with Section 310. Provided
24 however, in the case of a sale of mobile telecommunications service that is a prepaid
25 telecommunications service, the rule provided in Section 310, subsection (A)(5) shall
26 include as an option the location associated with the mobile telephone number.

27 4. A sale of a private communication service is sourced as follows:
28 a. Service for a separate charge related to a customer channel termination point is
29 sourced to each level of jurisdiction in which such customer channel termination
30 point is located.

- 1 b. Service where all customer termination points are located entirely within one
2 jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the
3 customer channel termination points are located.
- 4 c. Service for segments of a channel between two customer channel termination points
5 located in different jurisdictions and which segment of channel are separately charged
6 is sourced fifty percent in each level of jurisdiction in which the customer channel
7 termination points are located.
- 8 d. Service for segments of a channel located in more than one jurisdiction or levels of
9 jurisdiction and which segments are not separately billed is sourced in each
10 jurisdiction based on the percentage determined by dividing the number of customer
11 channel termination points in such jurisdiction by the total number of customer
12 channel termination points.

13

14 **Section 315: TELECOMMUNICATION SOURCING DEFINITIONS**

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

- 16 A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in
17 47 CFR 22.99, in which common carriers are authorized to offer and provide radio
18 telecommunications service for hire to subscribers in aircraft.
- 19 B. "Call-by-call Basis" means any method of charging for telecommunications services
20 where the price is measured by individual calls.
- 21 C. "Communications Channel" means a physical or virtual path of communications over
22 which signals are transmitted between or among customer channel termination points.
- 23 D. "Customer" means the person or entity that contracts with the seller of
24 telecommunications services. If the end user of telecommunications services is not the
25 contracting party, the end user of the telecommunications service is the customer of the
26 telecommunication service, but this sentence only applies for the purpose of sourcing
27 sales of telecommunications services under Section 314. "Customer" does not include a
28 reseller of telecommunications service or for mobile telecommunications service of a
29 serving carrier under an agreement to serve the customer outside the home service
30 provider's licensed service area.

- 1 E. "Customer Channel Termination Point" means the location where the customer either
2 inputs or receives the communications.
- 3 F. "End user" means the person who utilizes the telecommunication service. In the case of
4 an entity, "end user" means the individual who utilizes the service on behalf of the
5 entity.
- 6 G. "Home service provider" means the same as that term is defined in Section 124(5) of
7 Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 8 H. "Mobile telecommunications service" means the same as that term is defined in Section
9 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 10 I. "Place of primary use" means the street address representative of where the customer's
11 use of the telecommunications service primarily occurs, which must be the residential
12 street address or the primary business street address of the customer. In the case of
13 mobile telecommunications services, "place of primary use" must be within the licensed
14 service area of the home service provider.
- 15 J. "Post-paid calling service" means the telecommunications service obtained by making a
16 payment on a call-by-call basis either through the use of a credit card or payment
17 mechanism such as a bank card, travel card, credit card, or debit card, or by charge made
18 to a telephone number which is not associated with the origination or termination of the
19 telecommunications service. A post-paid calling service includes a telecommunications
20 service that would be a prepaid calling service except it is not exclusively a
21 telecommunication service.
- 22 K. "Prepaid calling service" means the right to access exclusively telecommunications
23 services, which must be paid for in advance and which enables the origination of calls
24 using an access number or authorization code, whether manually or electronically dialed,
25 and that is sold in predetermined units or dollars of which the number declines with use
26 in a known amount.
- 27 L. "Private communication service" means a telecommunication service that entitles the
28 customer to exclusive or priority use of a communications channel or group of channels
29 between or among termination points, regardless of the manner in which such channel or
30 channels are connected, and includes switching capacity, extension lines, stations, and

1 any other associated services that are provided in connection with the use of such
2 channel or channels.

3 M. "Service address" means:

- 4 1. The location of the telecommunications equipment to which a customer's call is
5 charged and from which the call originates or terminates, regardless of where the call
6 is billed or paid.
- 7 2. If the location in subsection (M)(1) is not known, service address means the
8 origination point of the signal of the telecommunications services first identified by
9 either the seller's telecommunications system or in information received by the seller
10 from its service provider, where the system used to transport such signals is not that
11 of the seller.
- 12 3. If the location in subsection (M)(1) and subsection (M)(2) are not known, the service
13 address means the location of the customer's place of primary use.

14
15 **Section 316: ENACTMENT OF EXEMPTIONS**

- 16 A. A member state may enact a product-based exemption without restriction if the
17 Agreement does not have a definition for the product or for a term that includes the
18 product. If the Agreement has a definition for the product or for a term that includes the
19 product, a member state may exempt all items included within the definition but shall
20 not exempt only part of the items included within the definition unless the Agreement
21 sets out the exemption for part of the items as an acceptable variation.
- 22 B. A member state may enact an entity-based or a use-based exemption without restriction
23 if the Agreement does not have a definition for the product whose use or purchase by a
24 specific entity is exempt or for a term that includes the product. If the Agreement has a
25 definition for the product whose use or specific purchase is exempt, a member state may
26 enact an entity-based or a use-based exemption that applies to that product as long as the
27 exemption utilizes the Agreement definition of the product. If the Agreement does not
28 have a definition for the product whose use or specific purchase is exempt but has a
29 definition for a term that includes the product, a member state may enact an entity-based
30 or a use-based exemption for the product without restriction.

1 C. For purposes of complying with the requirements in this section, the inclusion of a
2 product within the definition of tangible personal property is disregarded.
3

4 **Section 317: ADMINISTRATION OF EXEMPTIONS**

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

7 1. The seller shall obtain identifying information of the purchaser and the reason for
8 claiming a tax exemption at the time of the purchase as determined by the governing
9 board.

10 2. A purchaser is not required to provide a signature to claim an exemption from tax
11 unless a paper exemption certificate is used.

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

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

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

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

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

24 B. Each member state shall relieve sellers that follow the requirements of this section from
25 any tax otherwise applicable if it is determined that the purchaser improperly claimed an
26 exemption and to hold the purchaser liable for the nonpayment of tax. This relief from
27 liability does not apply to a seller who fraudulently fails to collect the tax or solicits
28 purchasers to participate in the unlawful claim of an exemption.
29

30 **Section 318: UNIFORM TAX RETURNS**

1 Each member state shall:

- 2 A. Require that only one tax return for each taxing period for each seller be filed for the
3 member state and all the taxing jurisdictions within the member state.
- 4 B. Require that returns be due no sooner than the twentieth day of the month following the
5 month in which the transaction occurred.
- 6 C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in
7 a simplified format that does not include more data fields than permitted by the
8 governing board. A member state may require additional informational returns to be
9 submitted not more frequently than every six months under a staggered system
10 developed by the governing board.
- 11 D. Allow any seller that is registered under the Agreement, which does not have a legal
12 requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit
13 its sales and use tax returns as follows:
- 14 1. Upon registration, a member state shall provide to the seller the returns required by
15 that state.
- 16 2. A member state may require a seller to file a return anytime within one year of the
17 month of initial registration, and future returns may be required on an annual basis in
18 succeeding years.
- 19 3. In addition to the returns required in subsection (D)(2), a member state may require
20 sellers to submit returns in the month following any month in which they have
21 accumulated state and local tax funds for the state in the amount of one thousand
22 dollars or more.
- 23 E. Participate with other member states in developing a more uniform sales and use tax return
24 that, when completed, would be available to all sellers.
- 25 F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns
26 electronically. It is the intent of the member states that all member states have the
27 capability of receiving electronically filed returns by January 1, 2004.

28
29 **Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS**

30 Each member state shall:

- 1 A. Require only one remittance for each return except as provided in this subsection. If any
2 additional remittance is required, it may only be required from sellers that collect more
3 than thirty thousand dollars in sales and use taxes in the member state during the
4 preceding calendar year as provided herein. The amount of the additional remittance
5 shall be determined through a calculation method rather than actual collections and shall
6 not require the filing of an additional return.
- 7 B. Require, at each member state's discretion, all remittances from sellers under Models 1,
8 2, and 3 to be remitted electronically.
- 9 C. Allow for electronic payments by both ACH Credit and ACH Debit.
- 10 D. Provide an alternative method for making "same day" payments if an electronic funds
11 transfer fails.
- 12 E. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are
13 due to that state on the next succeeding business day.
- 14 F. Require that any data that accompanies a remittance be formatted using uniform tax type
15 and payment type codes approved by the governing board.
- 16

17 **Section 320: UNIFORM RULES FOR RECOVERY OF BAD DEBTS**

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

- 21 A. Allow a deduction from taxable sales for bad debts. Any deduction taken that is
22 attributed to bad debts shall not include interest.
- 23 B. Utilize the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for
24 calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C.
25 Sec. 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes
26 charged on the purchase price; uncollectable amounts on property that remain in the
27 possession of the seller until the full purchase price is paid; expenses incurred in
28 attempting to collect any debt, and repossessed property.
- 29 C. Allow bad debts to be deducted on the return for the period during which the bad debt is
30 written off as uncollectable in the claimant's books and records and is eligible to be

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

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

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

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

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

22 H. In situations where the books and records of the party claiming the bad debt allowance
23 support an allocation of the bad debts among the member states, permit the allocation.
24

25 **Section 321: CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1**

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

29 B. As used in this section, the term "confidential taxpayer information" means all
30 information that is protected under a member state's laws, regulations, and privileges; the

1 term "personally identifiable information" means information that identifies a person;
2 and the term "anonymous data" means information that does not identify a person.

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

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

- 8 1. Its system has been designed and tested to ensure that the fundamental precept of
9 anonymity is respected;
- 10 2. That personally identifiable information is only used and retained to the extent
11 necessary for the administration of Model 1 with respect to exempt purchasers;
- 12 3. It provides consumers clear and conspicuous notice of its information practices,
13 including what information it collects, how it collects the information, how it uses the
14 information, how long, if at all, it retains the information and whether it discloses the
15 information to member states. Such notice shall be satisfied by a written privacy
16 policy statement accessible by the public on the official web site of the CSP;
- 17 4. Its collection, use and retention of personally identifiable information will be limited
18 to that required by the member states to ensure the validity of exemptions from
19 taxation that are claimed by reason of a consumer's status or the intended use of the
20 goods or services purchased; and
- 21 5. It provides adequate technical, physical, and administrative safeguards so as to
22 protect personally identifiable information from unauthorized access and disclosure.

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

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

29 G. When personally identifiable information regarding an individual is retained by or on
30 behalf of a member state, such state shall provide reasonable access by such individual to

1 his or her own information in the state's possession and a right to correct any inaccurately
2 recorded information.

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

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

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

- 12 1. Conduct audits or other review as provided under the Agreement and state law.
- 13 2. Provide records pursuant to a member state's Freedom of Information Act, disclosure
14 laws with governmental agencies, or other regulations.
- 15 3. Prevent, consistent with state law, disclosures of confidential taxpayer information.
- 16 4. Prevent, consistent with federal law, disclosures or misuse of federal return
17 information obtained under a disclosure agreement with the Internal Revenue Service.
- 18 5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental
19 purposes.

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

23 24 **Section 322: SALES TAX HOLIDAYS**

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

- 27 1. Not apply an exemption after December 31, 2003, unless the items to be exempted
28 are specifically defined in the Agreement and the exemptions are uniformly applied to
29 state and local sales and use taxes.

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

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

10 C. The governing board shall establish procedures to provide uniformity for the
11 administrative issues involved with the implementation of a sales tax holiday. These
12 issues include, but are not limited to:

- 13 1. Treatment of layaway purchases;
- 14 2. Exempt and nonexempt items that are packaged together;
- 15 3. Treatment of coupons or discounts;
- 16 4. Splitting of items normally sold together;
- 17 5. Treatment of rainchecks;
- 18 6. Exchanges;
- 19 7. Shipping and handling charges;
- 20 8. Service charges;
- 21 9. Restocking fees; and
- 22 10. Order date/Back orders.

23
24 **Section 323: CAPS AND THRESHOLDS**

25 A. Each member state shall:

- 26 1. Not have caps or thresholds on the application of state sales or use tax rates or
27 exemptions that are based on the value of the transaction or item after December 31,
28 2005. A member state may continue to have caps and thresholds until that date.

1 Nothing in this section shall operate to extend any person's time to seek a refund of sales
2 or use taxes collected or remitted in error.

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

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

14 15 **Section 326: DIRECT PAY PERMITS**

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

24 25 **Section 327: LIBRARY OF DEFINITIONS**

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

29 A. If a term defined in the Library of Definitions appears in a member state's sales
30 and use tax statutes or administrative rules or regulations, the member state shall

1 enact or adopt the Library definition of the term in its statutes or administrative
2 rules or regulations in substantially the same language as the Library definition.

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

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

10
11 **Section 328: TAXABILITY MATRIX**

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

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

22
23 **Section 329: EFFECTIVE DATE FOR RATE CHANGES**

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

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

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

ARTICLE IV
SELLER REGISTRATION

Section 401: SELLER PARTICIPATION

- A. The member states shall provide an online registration system that will allow sellers to register in all the member states.
- B. By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into the member states, including member states joining after the seller's registration. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.
- C. In member states where the seller has a requirement to register prior to registering under the Agreement, the seller may be required to provide additional information to complete the registration process or the seller may choose to register directly with those states.
- D. A member state or a state that has withdrawn or been expelled shall not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has nexus with that state for any tax at any time.

Section 402: AMNESTY FOR REGISTRATION

- A. Subject to the limitations in this section:
1. A member state shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the Agreement, provided that the seller was not so registered in that state in the twelve-month period preceding the effective date of the state's participation in the Agreement.
 2. The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the state, provided registration occurs within twelve months of the effective date of the state's participation in the Agreement.

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

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

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

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

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

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

17
18 **Section 403: METHOD OF REMITTANCE**

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

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

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

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

27
28 **Section 404: REGISTRATION BY AN AGENT**

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