

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2050

2005 SENATE FINANCE AND TAXATION

SB 2050

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2050

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 12, 2005

Tape Number	Side A	Side B	Meter #
# 1	X		45.7 - 61.3
		X	0.0 - 14.9
Committee Clerk Signature <i>Sharon Penzance</i>			

Minutes: All committee members present.

SEN. URLACHER: called the meeting to order and opened the hearing on SB 2050.

SEN. COOK: appeared as prime sponsor of the bill, presented material on streamline sales and use tax stating SB 2050 moves the effective date of our streamline sales tax implementing legislation ahead from December 31, 2005 to September 30, 2005. This new date will coincide with the target start up date set by the Conforming States of the Streamline Sales Tax Project. North Dakota's implementing legislation is in the process of being reviewed by the compliance review committee. This process should be completed while we are in session. The only issue that would keep us out of compliance, if this October 1, 2005 target date is met, is our effective date. I would suggest that we hold this bill for a while to allow for us to determine the likeliness of this October 1, 2005 target date being made. Once we know the exact start date the decision we need to make with this bill is, "do we want to be there at the very beginning or do we want to join at a later date"?.

There is a very important meeting that is coming up on July 1, 2005 and that is the meeting of the Petitioning States. It is at that meeting that these 19 states can petition for membership if they want and it is at that meeting that these states will then vote on each others state, (they cannot vote on themselves) as to whether or not they are truly in compliance.

GARY ANDERSON of the Tax Dept. Stating they certainly agree with the proposal, they are comfortable they can initiate the changes in the law, we can get the information out to the retailers. This particular bill would move the date up as Sen. Cook pointed out, but there are certain aspects within the streamline legislation that was passed in 2003 that does address the fact that for local govt. That they are allowed an opportunity till ____ December 31, 2005.

SEN. COOK: gave some more clarification stating we need to be sensitive to the small businesses as well as the larger ones.

SEN. URLACHER: noted the complexity of it, exemptions in the different states, interpretation of product, etc., it is just about impossible to really follow it to the letter. Feels its very important as stated before, crossing state lines is a common thing in purchases now and feels we need to move forward.

SEN. BERCIER: questioned on whether there was any discussion on how this will affect the tribes, the state or if there may be a conflict?

GARY: stated there is a group specifically looking at the Tribes affect and Sovereignty.

SEN. COOK: That is another big project and finding policies and the best solutions.

SEN. URLACHER: It's important that we need to get the information out for the people to understand and make good judgments.

SEN. EVERY: I think what people understand is that they enjoy being able to shop through a catalog or on the Internet and not have to pay those taxes, but what they don't understand is that those taxes are collectable taxes and by law they should be collected.

SEN. URLACHER: noted that it became a burden to other people and the other thing I see is we promote economical development in the state, but these sales are putting our instate businesses at a 5% disadvantage. A lot of the them have a margin of 5%, they feel pretty comfortable and if we are looking out for our state, why we hate to figure out a way to balance that out and not burden them.

NO FURTHER TESTIMONY or DISCUSSION. Hearing was closed.

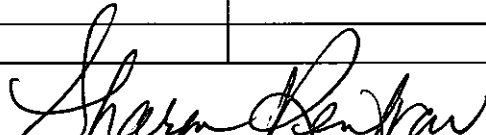
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2050

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 31, 2005

Tape Number	Side A	Side B	Meter #
# 2	X		35.1 - 39.6
Committee Clerk Signature 			

Minutes: Afternoon Committee Work.

SEN. COOK: This is the one where we started with a little overview of streamline sales tax, we passed legislation last session that changed our sales tax laws so that we were in compliance with the streamline act, we have another bill this session that will make some final changes. Both those bills, the one last session and this session have an effective date of January 1, 2006. As it looks right now the goal of streamline is to have it up and running and implemented October 1 of 2005, so the intent of this legislation is to move forward our effective date 90 days so that we could then be one of the original governing states. There is still a change that the October 1 date goal of the conforming states might be moved back 90 days we should realize that more by March or April while this bill is in the House, there is a change that this date before we go home could still change again, I suggest a **DO PASS AND REFER TO APPROPRIATIONS**, second by Sen. Every.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB 2050

Hearing Date January 31, 2005

SEN. COOK: pointing out the fiscal note, it shows a positive impact of \$69,000 but if you read the fiscal note, this is based on the assumption that the original estimate of sales tax or I should say use tax that we would start to collect, this fiscal note assumes that the governor took that into consideration when he did his budget, so that this fiscal note only shows the fiscal impact and use tax dollars that would be collected for a 90 day period and that's \$69,000. If the governor did not have it in his budget that it would be a lot larger number for the entire biennium. Shows what were missing in use taxes of \$69,000 a quarter is what there saying.

ROLL CALL VOTE: 6-0-0

Sen. Cook will carry the bill.

FISCAL NOTE
Requested by Legislative Council
03/11/2005

Amendment to: SB 2050

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$138,000	\$12,000		
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2050 with House Amendments changes the date of implementation of compliance with the streamlined sales and use tax agreement from December 31, 2005 to July 1, 2006.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The overall slight negative fiscal impact of the original estimate of compliance with the streamlined sales and use tax agreement is assumed in the Governor's budget (it was enacted in the 2003 Legislature). However, moving the effective date six months later is estimated to have a slight positive fiscal impact totaling \$150,000 in FY 06. By delaying the effective date, the negative fiscal impact is postponed one-half of a year. This legislation impacts the state general fund and the state aid distribution fund.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	03/14/2005

FISCAL NOTE

Requested by Legislative Council
12/17/2004

Bill/Resolution No.: SB 2050

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$69,000)	(\$6,000)		
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2050 changes the date of implementation of compliance with the streamlined sales and use tax agreement from December 31, 2005 to September 30, 2005.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The fiscal impact of the original estimate of compliance with the streamlined sales and use tax agreement is assumed in the Governor's budget (it was enacted in the 2003 Legislature). However, moving the effective date three months earlier is estimated to have a slight additional negative fiscal impact totaling \$75,000 in FY 06. This legislation impacts the state general fund and the state aid distribution fund.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/11/2005

Date: 1-31-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2050

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass & Refer to Approps

Motion Made By Cook Seconded By Every

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Bercier	✓	
Sen. Wardner	✓		Sen. Every	✓	
Sen. Cook	✓				
Sen. Tollefson	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Cook

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 31, 2005 5:00 p.m.

Module No: SR-20-1504
Carrier: Cook
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2050: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2050 was rereferred to the Appropriations Committee.

2005 SENATE APPROPRIATIONS

SB 2050

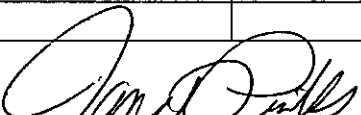
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2350

Senate Appropriations Committee

☐ Conference Committee

Hearing Date February 7, 2005

Tape Number	Side A	Side B	Meter #
1	a	b	
Committee Clerk Signature 			

Minutes:

Chairman Holmberg opened the hearing on SB 2050.

Gary Anderson, Director of Income, Sales & Special Taxes, ND Office of State Tax

Commissioner, presented written testimony and testified **about SB 2050**. He indicated this bill changes the effective date of compliance to October 1, 2005. This change does not change city sales tax, only state sales tax.

Chairman Holmberg indicated this would reduce general fund dollars by \$69,000. He then asked what does the state get out of it by reducing available money.

Other questions raised (Meter 5100) included members on various boards, effect of tax retrieval from internet sales, the overall expenditures, the uniform definitions with other states, the delivery charges being taxed, and the clarification of the streamlined sales tax.

Gary Anderson, in responding to questions, indicated that the reduction in taxes to the general fund is a result of the reduction of taxable items. The influx of out of state companies has not

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Senate Appropriations Committee

Bill/Resolution Number 2050

Hearing Date February 7, 2005

been figured into the projections as it is hard to determine what new businesses will come in. (SB 6159).

There was no further questions or testimony.

Chairman Holmberg closed the hearing on SB 2050.


2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2050

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 02/11/05

Tape Number	Side A	Side B	Meter #
2		x	2,087-2257
Committee Clerk Signature 			

Minutes: **Chairman Holmberg** opened meeting on SB 2050.

A **Do Pass** motion was made by Sen. Mathern, seconded by Sen. Andrist. Bill passed 13 to 1, with 1 absent. Sen. Cook will carry the bill.

Date 2-14-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2050

Senate SENATE APPROPRIATIONS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By M Seconded By A

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	✓		SENATOR KRAUTER	✓	
VICE CHAIRMAN BOWMAN	✓		SENATOR LINDAAS	✓	
VICE CHAIRMAN GRINDBERG	✓		SENATOR MATHERN	✓	
SENATOR ANDRIST	✓		SENATOR ROBINSON	✓	
SENATOR CHRISTMANN	✓		SEN. TALLACKSON	✓	
SENATOR FISCHER	✓				
SENATOR KILZER	✓				
SENATOR KRINGSTAD	✓				
SENATOR SCHOBINGER	✓	✓			
SENATOR THANE					

Total (Yes) 13 No 1

Absent 1

Floor Assignment FIN COOK

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 14, 2005 12:43 p.m.

Module No: SR-29-2763
Carrier: Cook
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2050: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2050 was placed on the
Eleventh order on the calendar.

2005 HOUSE FINANCE AND TAXATION

SB 2050

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2050**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 7, 2005**

Tape Number	Side A	Side B	Meter #
1	X		1
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. WES BELTER, CHAIRMAN Called the committee hearing to order.

SEN. DWIGHT COOK, DIST. 34, MANDAN Introduced the bill. The technical tax language bill which we passed last session, it moves that implementing date from December 31, 2005 to September 30, 2005. It moves it ahead 90 days. The purpose of this is that October 1 will be the target date for the nineteen states which have passed streamlined sales tax language. It will allow remote sellers to register and collect internet sales tax for all participating states who have passed the language. If we would leave our date as it is, we would not be able to participate until 90 days later. This is a decision we should make very carefully. We have two people on this committee that represented North Dakota on that policy, and they can certainly advise you as you move forward with this. There is a good chance that that September date might prove to be a challenge. There is also a certain amount of wisdom as to do we want to be there at startup. I hope you will hold this bill for awhile, and if you do pass it out, I would ask that you amend it so

Page 2
House Finance and Taxation Committee
Bill/Resolution Number **SB 2050**
Hearing Date **March 7, 2005**

that it is somewhat different then it comes to you now. I would suggest you amend it to July 1, 2006, that would put this into a conference committee then we could address this toward the end of the session.

With no further testimony, the committee hearing was closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2050**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 9, 2005**

Tape Number	Side A	Side B	Meter #
1	X		15.9
Committee Clerk Signature			

Minutes:

COMMITTEE ACTION

REP. DROVDAL Presented amendments to the committee members, which he stated would cause the bill to go to a conference committee, if we are still in session after April 16, to see what type of action the streamlined sales tax coalition makes, then we will take this amendment off and pass it as is.

REP. WEILER Made a motion to adopt the amendments as presented.

REP. GRANDE Second the motion. Motion carried by voice vote.

REP. WRANGHAM Made a motion for a **do pass as amended**.

REP. WEILER Second the motion. **MOTION CARRIED**

13 yes 1 no 0 absent

REP. WEILER Was given the floor assignment.

Date: 3905
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2050

House FINANCE & TAXATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

50212.0101

Action Taken

Do

Pass

as

Amended

Motion Made By

Rep. Wrangham

Seconded By

Rep. Weiler

Representatives	Yes	No	Representatives	Yes	No
BELTER, WES, CHAIRMAN	✓				
DROVDAL, DAVID, V-CHAIR	✓				
BRANDENBURG, MICHAEL	✓				
CONRAD, KARI	✓				
FROELICH, ROD	✓				
GRANDE, BETTE	✓				
HEADLAND, CRAIG	✓				
IVERSON, RONALD		✓			
KELSH, SCOT	✓				
NICHOLAS, EUGENE	✓				
OWENS, MARK	✓				
SCHMIDT, ARLO	✓				
WEILER, DAVE	✓				
WRANGHAM, DWIGHT	✓				

Total (Yes)

13

No

1

Absent

0

Floor Assignment

Rep. Weiler

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2050: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2050 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "September 30" and overstrike ", 2005" and insert immediately thereafter "July 1, 2006"

Page 1, line 12, remove "September 30" and overstrike ", 2005" and insert immediately thereafter "July 1, 2006"

Renumber accordingly

2005 SENATE FINANCE AND TAXATION

CONFERENCE COMMITTEE

SB 2050

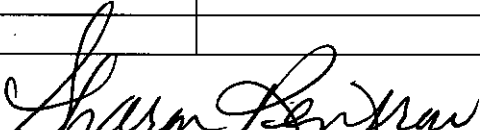
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2050**

Senate Finance and Taxation Committee

☒ Conference Committee

Hearing Date **April 11, 2005**

Tape Number	Side A	Side B	Meter #
#1	X		17.3 - 17.6
Committee Clerk Signature 			

Minutes:

CONFERENCE COMMITTEE

SEN. COOK: we'll open the meeting on SB 2050 and ask the clerk to take the roll.

ROLL CALL: all present.

Adjourned the meeting.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2359 & SB 2050

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date April 13, 2005

Tape Number	Side A	Side B	Meter #
#1	X		0.0 - 29.9
Committee Clerk Signature <i>Sharon R. Jensen</i>			

Minutes:

CONFERENCE COMMITTEE

SEN. COOK: it was my hope that we would be able to go over these amendments briefly especially the ones the will affect ND and that are going to be addressed Saturday at the implementing states meeting and to just lay the ground work so that next week we can come into conference committee and digest what happened at the meeting of the implementing states and make the final decisions that we have. Of course what we have here before us in SB 2359 is the effective date and next week we're going to have to decide when we want our effective date to be we will know then whether October 1 is still a legitimate start up date for implementing streamline sales tax target project and if that is still an effective target date and do we or do we not want to be there at the table October 1 and if not then of course when do we want to have our effective date set. Right now as the bill sits, the effective date is July 1 of 2006. The other bill we have 2050 deals with how we compensate remote sellers, that is the one issue as Sen.

Urlacher, myself, Rep. Drovdal, and Rep. Weiler have represented ND in the streamline project,

its the one area where we have state concerns where we have voiced our concerns. One of the amendments that will be offered Saturday addresses our concerns and just so you understand we hear a lot about the sovereign rights of states, the way the agreement is right now the compensation level for remote sellers would be established by the conforming states and the conforming states review the states that are in compliance at the time of start up of which we could be one. The conforming states is the group that I am a CO-chair of and that is who would set the compensation rate for remote sellers, it would be out of our hands. It is based on what certified service providers who are the new creation in the whole project, the whole purpose is to simply collect and remit sales tax for remote sellers. The way the agreement is that remote sellers that utilize a certified service provider would be able to collect and remit sales tax at no cost to the remote seller. In other words, the states would have to pay the full cost of whatever these certified service providers are going to charge. We do not yet know that price, the conforming states, its the RP, they've come in we haven't chooses who these certified service providers are going to be yet but once that decision is made then of course we will know what that cost is but I think we can be assured that right now that cost is going to be more than what we compensate our own sellers for collecting and remitting sales tax. So that I believe is a very important policy decision for this state legislature to make, that's why decision has been put into one bill, SB 2050, of course how we make that decision could also affect whether or not we are in compliance, that we will know by Saturday also. That gives you an overview of really the issues at hand and the decisions we have to make yet before we go home.

GARY ANDERSON: Tax Dept. Appeared to go over the amendments (see attachment)

SEN. COOK: a member state may not, there putting the word not in there utilize the system when the purchaser exempt payment of taxes is issued in identification number that shall be presented to the seller. Why would they not want them to?

MILES: Tax Dept. I think there was a little misunderstanding on their part because we issue numbers to exempt organizations and so on, the idea was there will be a standard exemption certificate that all states would use, the user will come in and identify themselves with this number on the purpose of the exemption. There was some industry people that did not want to have to worry about numbers. I think they were under the impression that the state wanted the seller to make sure that it was a valid number, which is a legitimate concern, we have no way of knowing whether its legitimate or not. The states intention was to provide this number on the certificate then if the state does an audit they can follow up on purchasers to see whether these are valid numbers or not. I think after the last meeting there was less concern this maybe withdrawn or their may be changes to it.

GARY ANDERSON: we do that now in ND when somebody presents a re___ if you would, a number we don't ask the retailers to try to verify that number and say is this a valid number or not. We take the ___ness of working directly with the customer if we feel there's a question.

SEN. COOK: committee, again to put things into perspective here so I hope you understand this, this is the agreement, this is what we've been working through all the implementing meetings for the last 3 years and its amazing you can sit there and spend an afternoon debating what the language should be for a definition of say candy. This will probably be the last meeting of the implementing of the states, the last opportunity to put this in the final form and if it goes October 1 as planned then this agreement goes from the ownership of the implementing states to

the conforming states and we'll go from 43 states at the table through possibility 19 or less, whatever the original conforming states are, then they have the ownership of this agreement and they have the right amend and change this agreement, right Gary?

GARY: Yes

SEN. COOK: if ND is not a member of the conforming states you'll see that SB 2050 has been amended so that there's opportunity to be a member of the local government and advisory council, we would not have a vote on what this agreement says but we would sit on a council where we could hopefully influence or as a council advise and have input at it. So that's one of the important things that we as North Dakota as we deliberate, do we want to be there immediately that we got to consider.

SEN. EVERY: so by voting the date to October 1st that we maintain our seats on that organizing, so what's the down side to not using October 1st date?

SEN. COOK: for us there is one downside that we struggle with the four of us and that is the issue of what we compensate remote sellers. Now maybe a lot of the sting of that will be removed here shortly when we find out what the costs are for these certified services providers ya know if we find out, as we make our argument Saturday we're going to have some support I don't know if we'll have enough but we might come back and amend 2359 or 2050 that we do compensate remote sellers more than what we're compensating our North Dakota retailers. The Retail Association, they're aware of this issue and they have polled their retailers, those who are members they understand the importance of streamline passing for leveling the playing field between brick and mortar businesses in ND and these remote sellers. They would support compensating out of state sellers more than we do ours but we've got to know how much. This

still leads to one issue and that is in my mind I always believe that what we compensate remote sellers should be our decision.

SEN. URLACHER: But that process right now is in motion is it not?

SEN. COOK: very fluid and in motion.

REP. CONRAD: so Saturday you'll know what the price is or have an idea?

SEN. COOK: I don't think we will on Saturday will we yet?

GARY; I think the last piece of information I got from the interim director that possibly like September for sure, so I think if they provide any numbers at all at this meeting its going to be an estimate, but I think that's what we need to know is just even from an estimated stand point what that could be.

SEN. COOK; its possible that the amendments we are offering, North Dakota, could change to at least maybe put a cap on what it is. In the amendments they basically have it so that we compensate the seller, not the certified service provider and I still believe that's where we made our mistake is when we made it so that we are compensating certified services providers rather than the seller. I think we should deal with the seller and the seller should sign their own contract with a certified service provider whoever can provide the service.

REP. CONRAD: reference to 11 million dollars a year, that we could if everything were to be put in place and everybody agreed and the Congress made everybody participate, that's a lot of money and also I looked at the sales tax in the last 10 years in the red book and our sales tax ____ for the last several years because of Internet and catalog sales, you mention that to people and they say well sure, that's what I do in my house so I think _____ for retailers is important to level that field.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB 2359 & SB 2050

Hearing Date April 13, 2005

REP. DROVDAL: the only clarification you did a good job would be the number of states is 18 or 19 as long as they represent 20% of the population.

SEN. URLACHER: that revenue, revenue estimate is we're in a time that's been way beyond that 11 million.

SEN. COOK: 27 million is what I know I was presented for the interim committee.

Adjourned the committee.

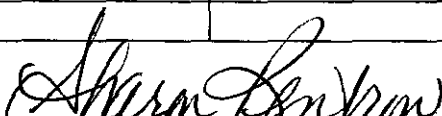
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2359 & SB 2050**

Senate Finance and Taxation Committee

☒ Conference Committee

Hearing Date **April 18, 2005**

Tape Number	Side A	Side B	Meter #
#1	X		0.0 - 19.4
Committee Clerk Signature 			

Minutes:

CONFERENCE COMMITTEE

SEN. COOK: Committee we are going to combine these two again (2359 & 2050), I just want to give you a brief overview of the action that happened Saturday in the Implementing States meeting explain the things that happened relative to these two bills that we have left to deal with and the options that we have. I can tell you that I met with the Tax Commissioners office this morning and their are amendments being drafted to 2359 dealing with the compensation and we have a good idea of what we would like to do with the implementing date effective date. For today I just want to bring everybody up to date and hopefully tomorrow we can meet and deal with these amendments.

So you understand exactly how these two bills fits in to what's going to happen down the road as far as organizations and this we have the implementing states, that's the meeting that was Saturday there's 40 states and anything that passed on Saturday had to have a $\frac{3}{4}$ ths vote, majority of the 40 states to support of these changes that we went over. The implementing states they

have ownership of the agreement right now. The goal is to get to the governing states the requirement that we have in the agreement is that as soon as we have a minimum of 10 states that equals 20% of the total population from the states that collect and remit sales tax, 45 states, then we can then implement, start the governing states and implement a program target date, for that right now is October 1 of 2005. We have in between here what's called the conforming states.

Handed out streamlined sales tax conforming states.

The sole purpose of this conforming states was a hand over transition from implementing to governing. If you look at the list of 19 states that you have there, since these 19 states came together, there are states are starting to recognize some challenges. The biggest challenge being recognized by states is trying implement the sourcing rules. The best way I can describe that its not a challenge to ND, in ND I have a business in Mandan if I sell something to Wahpeton I collect and remit sales tax to Wahpeton. Not all states do it that way. ND has a concern with compensation of remote sellers because of that challenge it appears that come October 1, we were not going to meet that 20% requirement, so rather than let this stalled, they created what's called an associate member and what an associate member is would be a state that would be sufficient to become a governing states but not quite yet into compliance. There might be one or two issues that keep them from being in compliance and they have a effective date that's still passed October 1. Those states would be an associate member, they would have the right to vote on the agreement, they would not have the right on other states coming in and as soon as we have 10 states with 20% of the population that we're fully in compliance, all associate members would be over with. Sometime in August or Sept. We will have the the ___ piece back and the final quotes from the certified service providers which will tell us what remote sellers are going to be

compensated, that ours challenge and that's why we have the other bill dealing with compensation is because we have to do something so that we can petition and be approved here and it has to speak towards compensation and we don't know what the compensation is going to be yet. That's our challenge. The plan right now is to move our affective date to October 1 so that we can surely be a member of the governing states that we are going to amend the compensation bill. Right now we compensate ND sellers at 1 ½ % with a cap of \$85 per month. The 1st one is \$75 per month per seller. The 2nd one 1 ½ % to 4% of tax collected based on each States volume. The 3rd one 2.75% of gross revenue, 4th one 1.8% of tax collected plus a 10 cent transaction fee per sale and a minimum of \$10 per month per seller. The 5th one 25 cent transaction fee, 5% of new revenue for 2 years. 6th one 25,000 per state to customize their web site, 50 cents for transaction with a minimum of \$5,000 per month and a maximum of \$30,000 per year, 7th one \$3.50 to \$6.00 per month per state for each seller plus 1 ½ % to 5 ½ % fee up to a maximum of \$1,750 per location per month. The point I'm making is that what most of these RFP's are coming in from certified service providers is they are going to be charging a lot more money than what we are compensating our own sellers right now and that to me is an issue that we have to deal with and the second challenge of course what we compensate is not made within the state of ND its made by this group right here. There is a chance the way this is drafted I believe, its not only a matter of compensation, there is a chance the way this is drafted that ND would end up compensating a remote seller who gives us no money.

The real important deal of moving this to October 1 is if we do that, the only issue that they would have with ND is petition for membership would be our compensation and that's where I want it to be and that's where I think it should be. I don't know if that's a quick and condensed of

an explanation as I can give to where we're at and what's happening, we should have amendments down here tomorrow on both bills, that's kind of where we're at. It's very imperative that we not only move forward with this but that we do it in a way that's not only right for ND but if we can bring any influence to the table and make sure that the whole project is done right, I think that's well worth our efforts. There's a day coming there's no doubt in my mind where no matter where you make a purchase, its going to be subject to sales tax and the sales tax is going to be collected and we've got to get there.

REP. WEILER: you eluded to that we could draft something up that we would agree to pay 1½%

And remove the cap for a period of 2 years. The question that comes to mind is I would imagine you mean for the next legislative session to take place, is that right? So that we could try to fix

SEN. COOK: the 2 years I'm thinking are calendar years 2006 and 2007, those 2 calendar years, that's what I'm thinking and we could revisit it in the legislative session in 2007.

REP. WEILER: the reason I had that question is because once the governing states make up their mind about the compensation is going to be, their not going to change their mind until we would have to change our statute to either agree with them or get out.

SEN. COOK: your are correct but there is another reason too, if you look at Article VI, the compensation you will see some language there especially for model 2 and model 3 sellers that anticipates a higher degree of compensation for the 1st two years, basically recognizing that there is going to be some start up expenses and actually its in all 3 models, model 1 also.

REP. WEILER: what kind of a problem is this going to propose to the retailers or the businesses now in ND that collect just that. If we have to pay the CSP's if they get more money

they get a bigger percentage, what has there been, I know Russ Hanson is here, problem with that?

SEN. COOK: I will never know, I certainly communicated with both Dave McIver and Russ Hanson to communicate to their various organizations and report back, they have both reported that their members are certainly understand the need to compensate the remote sellers more for a period of time and are willing to do so understanding the benefit of getting everybody on an equal playing field.

REP. CONRAD: when was the cap changed the last time?

SEN. COOK: doesn't know

REP. WEILER: question on compensation, you mentioned that in 2 years that may be lowered will we know that coming up. I mean we're not going into this thinking that maybe in 2 years they'll lower it, we're gonna know probably by August 1st that its going to be this for 2 years and then its going to be lowered to this.

SEN. COOK: I think that's very accurate, come the end of August early September we're going to know those numbers. The amendments will put it at 1 ½% with no cap or a lower amount if that is what the conforming states agreed to or the governing states agree to. So in other words if the RFP's and the contracts are signed for an amount lowered than that, then that is what we will pay.

SEN. URLACHER: at one point it will take 2/3rds vote in order to change any of it.

SEN. COOK: the federal legislation, everybody there is very concerned about the success that this has in Washington and its got a lot of bipartisan support, I think Dorgan is one of the sponsors of the bill.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB 2359 & SB 2050

Hearing Date April 18, 2005

REP. DROVDAL: you mentioned 30 states out of the implementing states, is that the same requirement for the conforming and for governing states? 2/3rds vote to change the bylaws.

SEN. COOK: I believe it is, 2/3rds or $\frac{3}{4}$, its not a simple majority. With that, hopefully we will have the amendments tomorrow and finish our discussion then.

Adjourned the meeting.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2050**

Senate Finance and Taxation Committee

☒ Conference Committee

Hearing Date **April 19, 2005**

Tape Number	Side A	Side B	Meter #
#1	X		6.3 - 8.1
Committee Clerk Signature <i>Sharon Lenzy</i>			

Minutes:

CONFERENCE COMMITTEE

SEN. COOK: committee you all the know the motion that needs to be made if we do what the plan is that we talked about yesterday, its the House Recede, that would put the effective date on October 1. By moving the effective date from January 1 to October 1 would allow us to be one of the original governing states supposedly if they find us to be in compliance, I also believe that it would if we were not in compliance or if they thought there was any question about compliance the only issue that they would be able to discuss I believe is going to be our compensation and I don't know how they can discuss that at that time because they won't even know what the compensation level is going to be. Committee your wishes or questions.

REP. CONRAD made a **MOTION THAT THE HOUSE RECEDE FROM THE HOUSE AMENDMENTS**, seconded by Sen. Urlacher.

SEN. COOK: any discussion? Being none, we'll have the clerk take the roll.

ROLL CALL VOTE: 6-0-0

Sen. Cook and Rep. Drovdal will carry the bill.

Page 2

Senate Finance and Taxation Committee

Bill/Resolution Number SB 2050

Hearing Date April 19, 2005

GARY ANDERSON: I just want to make sure, did the original bill then say after September

30th or did it say up to December 31st?

SEN. COOK: the original bill I believe was correct, after September 30th.

50212.0103
Title. 0300

Prepared by the Legislative Council staff for
Senator Cook

April 19, 2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

That the House recede from its amendments as printed on page 828 of the Senate Journal and page 974 of the House Journal.

Renumber accordingly

07398

Your Conference Committee

Dep. Cook

Sam. Urelacher

Sen. Evans

Rep. Drawn

Rep. Weiter

Rep. Conrad

☐ and place _____ on the Seventh order.

☐ having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

DATE: 4 / 19 / 05

CARRIER: Cook - Drordal

LC NO. 50212 . 0103 of amendment

LC NO. . of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

SB 2050: Your conference committee (Sens. Cook, Urlacher, Every and Reps. Drovdal, Weiler, Conrad) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 828 and place SB 2050 on the Seventh order.

SB 2050 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

SB 2050

SB 2050 moves the effective date of our streamline sales tax implimenting legislation ahead from December 31, 2005 to September 30th, 2005. This new date will coincide with the target start up date set be the Conforming States of the Streamline Sales Tax Project. North Dakota's implimenting legislation is in the process of being reviewed by the compliance review committee. This process should be completed while we are in session. The only issue that would keep us out of compliance, if this October 1, 2005 target date is met, is our effective date. I would suggest that we hold this bill for a while to allow for us to determine the likeliness of this October 1, 2005 target date being made. Once we know the exact start date the decision we need to make with this bill is do we want to be there at the very beginning or do we want to join at a later date.

Streamlined Sales Tax Conforming States

	State	Population	Estimated Effective Date	Percent of Population
1	Indiana	6,080,485	1/1/2004	2.22
2	Iowa -	2,926,324	7/1/2004	1.07
3	Kansas -	2,688,418	7/1/2003	0.98
4	Kentucky	4,041,769	7/1/2004	1.47
5	Michigan	9,938,444	9/1/2004	3.62
6	Nebraska	1,711,263	1/1/2004	0.62
7	North Carolina	8,049,313	1/1/2004	2.93
8	Ohio	11,353,140	1/1/2005	<u>4.14</u>
9	Oklahoma	3,450,654	1/1/2003	1.26
10	South Dakota	754,844	1/1/2004	0.28
11	West Virginia ^{current bill in April}	1,808,344	1/1/2004	0.66
12	Wyoming	493,782	1/1/2004	0.18
13	Minnesota - ^{Medical products}	4,919,479	7/1/2005	<u>1.79</u> 21.22
14	Tennessee ^{pending}	5,689,283	7/1/2005	<u>2.07</u>
15	Utah - ^{wont file yet}	2,233,169	7/1/2005	<u>0.81</u> 24.10
16	Arkansas	2,673,400	1/1/2006	0.97
17	North Dakota	642,200	1/1/2006	0.23
18	Nevada	1,998,257	1/1/2006	0.73
19	Vermont	608,827	1/1/2006	0.22
Totals		72,061,395		26.25

pending ??
 delaying date
 No

Kansas: effort to change implementing date until after Congress act -

Wisconsin: bill should pass early July - Implementing date Oct 1
 N-J - possible conformance by end of March = July 1st 2005
 3.06%

ARTICLE VII
AGREEMENT ORGANIZATION

Section 701: EFFECTIVE DATE

The Agreement shall become binding and take effect when at least ten states comprising at least twenty percent of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have either been found to be in compliance with the requirements of the Agreement pursuant to Section 805 or have been found to be an associate member pursuant to Section 704. The Agreement shall take effect on the first day of a calendar quarter at least sixty days after the tenth state is found in compliance or is found to be an associate member.
~~, but cannot take effect prior to July 1, 2003.~~

Section 702: APPROVAL OF INITIAL STATES

Prior to the effective date of the Agreement, a state ~~that has adopted changes to its statutes, rules, regulations, or other authorities necessary to bring the state into compliance as provided in Section 805.~~ may seek membership by forwarding a petition for membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing States. The certificate of compliance shall meet the requirements of Section 802. If some changes to a state's statutes, rules, regulations, or other authorities have been adopted, but are not yet in effect, the petition for membership shall include the date on which those changes shall be effective. A petitioning state shall also provide a copy of its petition for membership and certificate of compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site.

Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. The meeting shall be convened as soon as practicable after receipt of the requisite number of petitions provided in Section 701, ~~but shall not be earlier than the date the relevant statutes, rules, regulations, or other authorities of the requisite number of petitioning states are effective.~~ An affirmative vote of three-fourths of the other petitioning states is

(1)

✓

necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.

The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

Section 703: STREAMLINED SALES TAX IMPLEMENTING STATES

A. From the time of ratification of this Agreement until the provisions of Section 701 have been met, the Streamlined Sales Tax Implementing States shall maintain responsibility for the Agreement, including the disposition of all proposed amendments to the Agreement. If the provisions of Section 701 have been met with the use of associate members as defined in Section 704, the Streamlined Sales Tax Implementing States shall be responsible for the disposition of all proposed amendments to and interpretations of the Agreement until such time as the provisions of Section 701 have been met without the use of associate members.

B. Amendments to the Agreement considered by the Streamlined Sales Tax Implementing States shall follow the provisions as set forth in Article IX, Section 901.

C. For a period of not less than six months nor longer than one year after the provisions of Section 701 are met without the use of associate members, the Streamlined Sales Tax Implementing States shall provide advice to the Governing Board of the Agreement and shall be consulted by the Governing Board before amending the Agreement.

Section 704: CONSIDERATION OF PETITIONS

A. A petitioning state that is found to be in compliance pursuant to Section 805 of the Agreement and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are in effect shall be designated a Member State.

A petitioning state that is found to be in compliance pursuant to Section 805 of the Agreement and the changes to their statutes, rules, regulations or other authorities necessary to

bring them into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008, shall be designated an Associate Member. Provided the statutes, rules, regulations or other authorities remain in effect, the state shall automatically become a Member State upon the effective date of the conforming legislation.

C. A petitioning state that fails to receive an affirmative vote of three-fourths of the petitioning states as required under Section 702 may request Associate Membership.

If such a request is made, the Petitioning States may grant such membership by majority vote upon a finding that the state ~~has made a good faith effort to comply~~ has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision as required by Section 805, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008. A state that is granted Associate Membership by this section shall be required to re-petition for full membership under the requirements of the Agreement.

Section 705: ASSOCIATE MEMBERSHIP

A. An associate member shall have all the rights and privileges of a member state except that an associate member may not vote on amendments to or interpretations of the Agreement when the provisions of Section 701 have been met without the use of associate members. Associate members may vote on amendments to or interpretations of the Agreement as an Implementing State under Section 703A.

B. An associate member shall retain such status until the Governing Board finds such state to be in compliance pursuant to Section 805 or December 31, 2007, whichever is earlier, without regard to whether the population requirement of Section 701 has been met. Any associate member that has not been found in compliance by December 31, 2007 shall forfeit its status as an associate member. No state may be an associate member after December 31, 2007. The Co-Chairs of the Streamlined Sales Tax Implementing States shall provide an associate member state with the reasons why such state is not in compliance with the Agreement.

C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such taxes under applicable law. Notwithstanding the provisions of Section 401B, a seller that volunteers to collect tax in an associate member state is not required to collect tax in any other associate member state. An associate member shall be responsible for payment of ~~certified service provider~~ costs as provided in Article VI for those sellers that volunteer to collect tax in an associate member state. ~~and utilize the services of a certified service provider.~~

D. Neither the Governing Board nor a member state may share or grant access to an associate member state any seller information from the seller's registration pursuant to Section 401. Neither the Governing Board nor a member state may share or grant access to an associate member state any seller information from an audit conducted by the Governing Board or a member state on behalf of the Governing Board unless the associate member state is a party to the audit.

E. An associate member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the Streamlined Sales Tax Implementing States or Governing Board.

F. An associate member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the associate member status is attained until 12 months after the associate member state has been found to be in compliance with the Agreement.

STREAMLINED SALES & USE TAX

Quill Corp. v North Dakota

The 1992 U.S. Supreme Court case *Quill Corp. v. North* provided the basis for the Streamlined Sales Tax Project. This court decision prohibited states from imposing sales or use tax on remote sellers that do not have a physical presence (nexus) in states they do business.

Quill Corporation sells office supplies using catalogs, telephone solicitation, and internet. In 1992, Quill sold approximately \$1 million worth of product to about 3,000 North Dakota customers. However, Quill did not have a physical presence in North Dakota, and therefore, did not collect North Dakota sales or use taxes. Identifying and insuring the remittance of use tax from the North Dakota customers was difficult or impossible.

When the U.S. Supreme Court looked at the imposition of sales and use taxes by states, such as North Dakota, the Court determined the differences in the administration of sales and use taxes by individual states and local taxing jurisdictions were cumbersome enough that they would impose an unconstitutional burden on businesses operating in interstate commerce. This resulted in a ruling that stated only those retailers having a physical presence in a state could be required to collect and remit that state's sales and use tax, unless Congressional action provides such authority.

It was in response to the Court's decision that states began to look at ways to simplify and modernize sales and use tax systems, and subsequent counter the unconstitutional burden recognized by the Court. These discussions led to the organization of the Streamlined Sales Tax Project in March 2000.

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the business community, to simplify and modernize sales and use tax collection and administration, and yet maintain state sovereignty. Forty-two states and the District of Columbia are involved in the Project. Forty-five states and the District of Columbia impose a sales and use tax.

CHAPTER 542**SENATE BILL NO. 2455**

(Senators Cook, Nething)

(Approved by the Delayed Bills Committee)

**SIMPLIFIED SALES AND USE TAX ADMINISTRATION
ACT**

AN ACT to adopt a Simplified Sales and Use Tax Administration Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Agreement" means the streamlined sales and use tax agreement.
2. "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.
3. "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.
4. "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.
5. "Sales tax" means the tax levied under chapter 57-39.2.
6. "Seller" means any person making sales, leases, or rentals of personal property or services.
7. "State" means any state of the United States and the District of Columbia.
8. "Use tax" means the tax levied under chapter 57-40.2.

SECTION 2. Participation in multistate discussions. For reviewing or amending the agreement embodying the provisions contained in section 5 of this Act, the state shall enter into multistate discussions. For purposes of such discussions, the state must be represented by two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative council. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to reviewing or amending the agreement.

SECTION 3. Tax commissioner may enter agreement. Upon prior approval of the agreement by the legislative assembly, the tax commissioner may 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 tax commissioner may 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 tax commissioner may take other actions reasonably required to implement this Act. Other actions authorized by this section include the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The tax commissioner or the tax commissioner's designee is authorized to represent this state before the other states that are signatories to the agreement.

SECTION 4. Relationship to state law. A provision of the agreement authorized by this Act does not invalidate or amend, in whole or in part, 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 5. Agreement requirements. The streamlined sales and use tax agreement must include provisions relating to a simplified state rate; uniform standards for sourcing of transactions, exempt sales, and returns and remittances; central registration for sellers; monetary allowances for certified service providers and sellers implementing new technological models; consumer privacy; and state administration of local sales and use taxes.

SECTION 6. 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 7. Limited binding and beneficial effect.

1. The agreement authorized by this Act binds and inures only to the benefit of this state and the other member states. A person, other than a member state, is not 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.
2. Consistent with subsection 1, a person does not have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. A person may not 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.
3. A law of this state, or the application of a law, may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

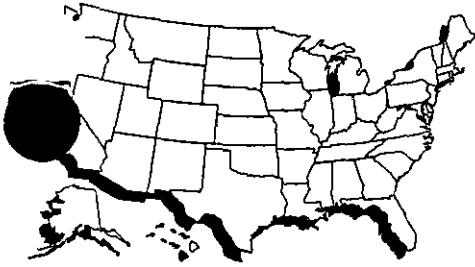
SECTION 8. Seller and third-party liability.

1. 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 who 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.

2. A person who 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 who uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.
3. A seller who 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.

Approved April 23, 2001
Filed April 23, 2001



Streamlined Sales Tax Project

Executive Summary

April 2004

Steering Committee

Diane Hardt
Co-Chair
Wisconsin

Scott Peterson
Co-Chair
South Dakota

Carol Fischer
Missouri

Harold Fox
New Jersey

Bruce Johnson
Utah

Eleanor Kim
Texas

Tom Kimmett
Pennsylvania

Marshall Stranburg
Florida

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 collection and administration. The Project's proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection. The Project's proposals are focused on improving sales and use tax administration systems for both Main Street and remote sellers for all types of commerce.

Forty-two states and the District of Columbia are involved in the Project. Forty-five states and the District of Columbia impose a sales and use tax.

The Project was organized in March 2000. The Project is conducting its work through a steering committee with co-chairs, and a number of work groups. Project participants are generally state revenue department administrators but there are also representatives of state legislatures and local governments. Businesses — including national retailers, trade associations, manufacturers, direct marketers, telecommunications companies, leasing companies, technology companies, printers, accounting firms, and others — have actively participated in the Project by offering expertise and input, reviewing proposals, suggesting language, and testifying at public hearings.

The goal of the Streamlined Sales Tax Project is to provide states with a Streamlined Sales Tax System that includes the following key features:

- **Uniform definitions within tax laws.** Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the Project's definitions, a certain amount of impact on state revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through common definitions.
- **Rate simplification.** States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or taxable services at another rate. State and local governments will accept responsibility for notice of rate and boundary

changes at restricted times. States will provide an on-line rate/jurisdiction database to simplify rate determinations.

- **State level tax administration of all state and local sales and use taxes.** Businesses will no longer file tax returns with each local government within which it conducts business in a state. Each state will provide a central point of administration for all state and local sales and use taxes and the distribution of the local taxes to the local governments. A state and its local governments will use common tax bases.
- **Uniform sourcing rules.** The states will have uniform and simple rules for how they will source transactions to state and local governments. The uniform rules will be destination/delivery based and uniform for tangible personal property, digital property, and services. Special sourcing rules will be developed for unique industries.
- **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 paying the tax, interest and penalties for claiming incorrect exemptions. States will have a uniform exemption certificate in paper and electronic form.
- **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 limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.
- **State funding of the system.** To reduce the financial burdens on sellers, states will assume responsibility for funding some of the technology models. The states are also participating in a joint business – government study of the costs of collection on sellers.

The Project proposes that states change their sales and use tax laws to conform with the simplifications as proposed by the Project. Thus, the simplifications would apply to all sellers. Sellers who do not have a physical presence or "nexus" are not required to collect sales and use taxes unless Congress chooses to require collection from all sellers for all types of commerce. Sellers without a physical presence can volunteer to collect under the proposed simplifications. Registration by sellers to voluntarily collect sales and use taxes will not infer that the business must pay business activity taxes, such as the corporate franchise or income tax.

The Streamlined Sales Tax System will provide sellers the opportunity to use one of three technology models. A seller may use Model 1 where a Certified Service Provider, compensated by the states, will perform all of the seller's sales tax

functions. A seller may use 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 use Model 3 and have its own system certified by the states collectively. However, some sellers may choose to continue to use their current systems and still enjoy the benefits of the Project's simplifications.

The Streamlined Sales Tax Project envisions two components to the legislation necessary to accomplish the Project's goals. First, states would adopt enabling legislation referred to as the Uniform Sales and Use Tax Administration Act ("Act"). The Act allows the state to enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and all types of commerce. The Act does not require any amendments to a state's sales and use tax law.

Secondly, states would amend or modify their sales and use tax laws to achieve the simplifications and uniformity required by the participating states working together. The Project refers to this legislation as the Streamlined Sales and Use Tax Agreement ("Agreement"). Some states will require only minor changes to current law to implement the requirements of the Agreement. Other states with more complicated sales tax laws may require significant changes to current law to be in accord with the Agreement.

A certificate of compliance will document each state's compliance with the provisions of the Agreement and cite applicable statutes, rules or regulations, or other authorities supporting such compliance. Public notice and comment will be provided before a state becomes part of the interstate Agreement. A state is in compliance with the Agreement if the effect of the state's laws, rules or regulations, and policies is substantially compliant with each of the requirements of the Agreement. If a state is found to be out of compliance with the Agreement, it will not be accepted into the interstate Agreement or will be sanctioned or expelled by the other participating states. In a voluntary system, sellers who are voluntarily collecting sales taxes for participating states may decide to no longer collect for the expelled state. Also, that state may not have a vote on changes in the Agreement.

A governing board will be comprised of representatives of each member state of the Agreement. Each member state is entitled to one vote on the governing board. The governing board is responsible for interpretations of the Agreement, amendments to the Agreement, and issue resolution. A State and Local Government Advisory Council and a Business and Taxpayer Advisory Council from the private sector will advise the governing board.

On November 12, 2002, thirty states and the District of Columbia approved the interstate Agreement provisions. As of April 2004, twenty states have moved forward and enacted all or part of the conforming legislation.

It's anticipated that states that enacted the conforming legislation and are found to be in compliance with the Agreement will continue as the governing states of the interstate Agreement of the future. States will verify compliance with the requirements of the Agreement in 2004.

The project website is www.streamlinedsalestax.org.

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STREAMLINED SALES AND USE TAX AGREEMENT

Adopted November 12, 2002

(As amended November 19, 2003)

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1 ARTICLE I
2 PURPOSE AND PRINCIPLE
3

4 **Section 101: TITLE**

5 This multistate Agreement shall be referred to, cited, and known as the Streamlined Sales and
6 Use Tax Agreement.
7

8 **Section 102: FUNDAMENTAL PURPOSE**

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

- 13 A. State level administration of sales and use tax collections.
14 B. Uniformity in the state and local tax bases.
15 C. Uniformity of major tax base definitions.
16 D. Central, electronic registration system for all member states.
17 E. Simplification of state and local tax rates.
18 F. Uniform sourcing rules for all taxable transactions.
19 G. Simplified administration of exemptions.
20 H. Simplified tax returns.
21 I. Simplification of tax remittances.
22 J. Protection of consumer privacy.
23

24 **Section 103: TAXING AUTHORITY PRESERVED**

25 This Agreement shall not be construed as intending to influence a member state to impose a tax
26 on or provide an exemption from tax for any item or service. However, if a member state
27 chooses to tax an item or exempt an item from tax, that state shall adhere to the provisions
28 concerning definitions as set out in Article III of this Agreement.
29

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 4. Until December 31, 2005, florist sales as defined by each member state. Prior to this
25 date, these items must be sourced according to the requirements of each member
26 state.

27
28 **Section 310: GENERAL SOURCING RULES**

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

- 1 1. When the product is received by the purchaser at a business location of the seller, the
2 sale is sourced to that business location.
- 3 2. When the product is not received by the purchaser at a business location of the seller,
4 the sale is sourced to the location where receipt by the purchaser (or the purchaser's
5 donee, designated as such by the purchaser) occurs, including the location indicated
6 by instructions for delivery to the purchaser (or donee), known to the seller.
- 7 3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location
8 indicated by an address for the purchaser that is available from the business records of
9 the seller that are maintained in the ordinary course of the seller's business when use
10 of this address does not constitute bad faith.
- 11 4. When subsections (A)(1), (A)(2), and (A)(3) do not apply, the sale is sourced to the
12 location indicated by an address for the purchaser obtained during the consummation
13 of the sale, including the address of a purchaser's payment instrument, if no other
14 address is available, when use of this address does not constitute bad faith.
- 15 5. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), or (A)(4)
16 apply, including the circumstance in which the seller is without sufficient information
17 to apply the previous rules, then the location will be determined by the address from
18 which tangible personal property was shipped, from which the digital good or the
19 computer software delivered electronically was first available for transmission by the
20 seller, or from which the service was provided (disregarding for these purposes any
21 location that merely provided the digital transfer of the product sold).
- 22 B. The lease or rental of tangible personal property, other than property identified in
23 subsection (C) or subsection (D), shall be sourced as follows:
 - 24 1. For a lease or rental that requires recurring periodic payments, the first periodic
25 payment is sourced the same as a retail sale in accordance with the provisions of
26 subsection (A). Periodic payments made subsequent to the first payment are sourced
27 to the primary property location for each period covered by the payment. The primary
28 property location shall be as indicated by an address for the property provided by the
29 lessee that is available to the lessor from its records maintained in the ordinary course
30 of business, when use of this address does not constitute bad faith. The property

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

1 b. Operated under authority of a carrier authorized and certificated by the U.S.
2 Department of Transportation or another federal authority to engage in the
3 carriage of persons or property in interstate commerce.

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

7 4. Containers designed for use on and component parts attached or secured on the items
8 set forth in subsections (D)(1) through (D)(3).
9

10 **Section 311: GENERAL SOURCING DEFINITIONS**

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

12 A. Taking possession of tangible personal property,

13 B. Making first use of services, or

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

15 The terms "receive" and "receipt" do not include possession by a shipping company on behalf of
16 the purchaser.
17

18 **Section 312: MULTIPLE POINTS OF USE**

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

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

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

- 1 C. The MPU Exemption Form will remain in effect for all future sales by the seller to the
2 purchaser (except as to the subsequent sale's specific apportionment that is governed by
3 the principle of subsection (B) and the facts existing at the time of the sale) until it is
4 revoked in writing.
- 5 D. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form
6 to the seller. A direct pay permit holder shall follow the provisions of subsection (B) in
7 apportioning the tax due on a digital good or a service that will be concurrently available
8 for use in more than one jurisdiction.
9

10 **Section 313: DIRECT MAIL SOURCING**

- 11 A. Notwithstanding Section 310, a purchaser of direct mail that is not a holder of a direct
12 pay permit shall provide to the seller in conjunction with the purchase either a Direct
13 Mail Form or information to show the jurisdictions to which the direct mail is delivered
14 to recipients.
- 15 1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to
16 collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit
17 the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for
18 all future sales of direct mail by the seller to the purchaser until it is revoked in
19 writing.
- 20 2. Upon receipt of information from the purchaser showing the jurisdictions to which
21 the direct mail is delivered to recipients, the seller shall collect the tax according to
22 the delivery information provided by the purchaser. In the absence of bad faith, the
23 seller is relieved of any further obligation to collect tax on any transaction where the
24 seller has collected tax pursuant to the delivery information provided by the
25 purchaser.
- 26 B. If the purchaser of direct mail does not have a direct pay permit and does not provide the
27 seller with either a Direct Mail Form or delivery information, as required by subsection
28 (A) of this section, the seller shall collect the tax according to Section 310, subsection
29 (A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax
30 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(7) 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
24 return 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, 2004, 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.

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

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

C. The following procedures are to be used by member states in administering a sales tax holiday exemption:

1. Layaway sales - A sale of eligible property under a layaway sale qualifies for exemption if:

a. final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or

b. the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

2. Bundled sales - Member states will follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.

3. Coupons and discounts - A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.

- 1 4. Splitting of items normally sold together - Articles that are normally sold as a
2 single unit must continue to be sold in that manner. Such articles cannot be
3 priced separately and sold as individual items in order to obtain the
4 exemption. For example, a pair of shoes cannot have each shoe sold
5 separately so that the sales price of each shoe is within a sales tax holiday
6 price threshold.
- 7 5. Rain checks - A rain check allows a customer to purchase an item at a certain
8 price at a later time because the particular item was out of stock. Eligible
9 property that customers purchase during the exemption period with use of a
10 rain check will qualify for the exemption regardless of when the rain check
11 was issued. Issuance of a rain check during the exemption period will not
12 qualify eligible property for the exemption if the property is actually
13 purchased after the exemption period.
- 14 6. Exchanges - The procedure for an exchange in regards to a sales tax holiday is
15 as follows:
 - 16 a. If a customer purchases an item of eligible property during the exemption
17 period, but later exchanges the item for a similar eligible item, even if a
18 different size, different color, or other feature, no additional tax is due
19 even if the exchange is made after the exemption period.
 - 20 b. If a customer purchases an item of eligible property during the exemption
21 period, but after the exemption period has ended, the customer returns the
22 item and receives credit on the purchase of a different item, the
23 appropriate sales tax is due on the sale of the newly purchased item.
 - 24 c. If a customer purchases an item of eligible property before the exemption
25 period, but during the exemption period the customer returns the item and
26 receives credit on the purchase of a different item of eligible property, no
27 sales tax is due on the sale of the new item if the new item is purchased
28 during the exemption period.
- 29 7. Delivery charges - Delivery charges, including shipping, handling and service
30 charges, are part of the sales price of eligible property unless a member state

1 defines "sales price" to exclude such charges. For the purpose of determining
2 a sales tax holiday price threshold, if all the property in a shipment qualifies as
3 eligible property and the sales price for each item in the shipment is within the
4 sales tax holiday price threshold, then the seller does not have to allocate the
5 delivery, handling, or service charge to determine if the price threshold is
6 exceeded. The shipment will be considered a sale of eligible products. If the
7 shipment includes eligible property and taxable property (including an eligible
8 item with a sales price in excess of the price threshold), the seller should
9 allocate the delivery charge by using:

- 10 a. a percentage based on the total sales prices of the taxable property
11 compared to the total sales prices of all property in the shipment; or
- 12 b. a percentage based on the total weight of the taxable property compared to
13 the total weight of all property in the shipment.

14 The seller must tax the percentage of the delivery charge allocated to the
15 taxable property but does not have to tax the percentage allocated to the
16 eligible property.

- 17 8. Order date and back orders - For the purpose of a sales tax holiday, eligible
18 property qualifies for exemption if:
- 19 a. the item is both delivered to and paid for by the customer during the
20 exemption period; or
 - 21 b. the customer orders and pays for the item and the seller accepts the order
22 during the exemption period for immediate shipment, even if delivery is
23 made after the exemption period. The seller accepts an order when the
24 seller has taken action to fill the order for immediate shipment. Actions to
25 fill an order include placement of an "in date" stamp on a mail order or
26 assignment of an "order number" to a telephone order. An order is for
27 immediate shipment when the customer does not request delayed
28 shipment. An order is for immediate shipment notwithstanding that the
29 shipment may be delayed because of a backlog of orders or because stock
30 is currently unavailable to, or on back order by, the seller.

- 1 9. Returns - For a 60-day period immediately after the sales tax holiday
2 exemption period, when a customer returns an item that would qualify for the
3 exemption, no credit for or refund of sales tax shall be given unless the
4 customer provides a receipt or invoice that shows tax was paid, or the seller
5 has sufficient documentation to show that tax was paid on the specific item.
6 This 60-day period is set solely for the purpose of designating a time period
7 during which the customer must provide documentation that shows that sales
8 tax was paid on returned merchandise. The 60-day period is not intended to
9 change a seller's policy on the time period during which the seller will accept
10 returns.
11 10. Different time zones - The time zone of the seller's location determines the authorized
12 time period for a sales tax holiday when the purchaser is located in one time zone and
13 a seller is located in another.

14
15 **Section 323: CAPS AND THRESHOLDS**

- 16 A. Each member state shall:
17 1. Not have caps or thresholds on the application of state sales or use tax rates or
18 exemptions that are based on the value of the transaction or item after December 31,
19 2005. A member state may continue to have caps and thresholds until that date.
20 2. Not have caps that are based on the application of the rates unless the member state
21 assumes the administrative responsibility in a manner that places no additional burden
22 on the retailer.
23 B. Each member state that has local jurisdictions that levy a sales or use tax shall not place
24 caps or thresholds on the application of local rates or use tax rates or exemptions that are
25 based on the value of the transaction or item after December 31, 2005. A member state
26 may continue to have caps and thresholds until that date.
27 C. The provisions of this section do not apply to sales or use taxes levied on the retail sale or
28 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or
29 mobile homes or to instances where the burden of administration has been shifted from
30 the retailer.

1
2 **Section 324: ROUNDING RULE**

3 A. After December 31, 2005, each member state shall adopt a rounding algorithm that meets
4 the following criteria:

- 5 1. Tax computation must be carried to the third decimal place, and
6 2. The tax must be rounded to a whole cent using a method that rounds up to the next
7 cent whenever the third decimal place is greater than four.

8 B. Each state shall allow sellers to elect to compute the tax due on a transaction on an item
9 or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state
10 and local taxes. No member state shall require a seller to collect tax based on a bracket
11 system.
12

13 **Section 325: CUSTOMER REFUND PROCEDURES**

14 A. These customer refund procedures are provided to apply when a state allows a purchaser
15 to seek a return of over-collected sales or use taxes from the seller.

16 B. Nothing in this section shall either require a state to provide, or prevent a state from
17 providing, a procedure by which a purchaser may seek a refund directly from the state
18 arising out of sales or use taxes collected in error by a seller from the purchaser.

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

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

27 D. In connection with a purchaser's request from a seller of over-collected sales or use
28 taxes, a seller shall be presumed to have a reasonable business practice, if in the
29 collection of such sales or use taxes, the seller: i) uses either a provider or a system,

1 including a proprietary system, that is certified by the state; and ii) has remitted to the
2 state all taxes collected less any deductions, credits, or collection allowances.
3

4 **Section 326: DIRECT PAY PERMITS**

5 Each member state shall provide for a direct pay authority that allows the holder of a direct pay
6 permit to purchase otherwise taxable goods and services without payment of tax to the supplier
7 at the time of purchase. The holder of the direct pay permit will make a determination of the
8 taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each
9 state can set its own limits and requirements for the direct pay permit. The governing board shall
10 advise member states when setting state direct pay limits and requirements, and shall consider
11 use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI
12 Audit and Legal Issues for Tax Administration.
13

14 **Section 327: LIBRARY OF DEFINITIONS**

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

- 18 A. If a term defined in the Library of Definitions appears in a member state's sales
19 and use tax statutes or administrative rules or regulations, the member state shall
20 enact or adopt the Library definition of the term in its statutes or administrative
21 rules or regulations in substantially the same language as the Library definition.
- 22 B. A member state shall not use a Library definition in its sales or use tax statutes or
23 administrative rules or regulations that is contrary to the meaning of the Library
24 definition.
- 25 C. Except as specifically provided in Section 316 and the Library of Definitions, a
26 member state shall impose a sales or use tax on all products or services included
27 within each definition or exempt from sales or use tax all products or services
28 within each definition.
29

30 **Section 328: TAXABILITY MATRIX**

- 1 A. To ensure uniform application of terms defined in the Library of Definitions each
2 member state shall complete a taxability matrix adopted by the governing board.
3 The member state's entries in the matrix shall be provided and maintained in a
4 database that is in a downloadable format approved by the governing board. A
5 member state shall provide notice of changes in the taxability of the products or
6 services listed in the taxability matrix as required by the governing board.
- 7 B. A member state shall relieve sellers and CSPs from liability to the member state and
8 its local jurisdictions for having charged and collected the incorrect amount of sales
9 or use tax resulting from the seller or CSP relying on erroneous data provided by the
10 member state in the taxability matrix.

11

12 **Section 329: EFFECTIVE DATE FOR RATE CHANGES**

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

- 15 A. For a rate increase, the new rate shall apply to the first billing period starting on or after
16 the effective date.
- 17 B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective
18 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.

ARTICLE V
PROVIDER AND SYSTEM CERTIFICATION

Section 501: CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS

- A. The governing board shall certify automated systems and service providers to aid in the administration of sale and use tax collections.
- B. The governing board may certify a person as a CSP if the person meets all of the following requirements:
1. The person uses a CAS;
 2. The person integrates its CAS 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 in accordance with Section 321 of the Agreement; and
 6. The person enters into a contract with the member states and agrees to comply with the terms of the contract.
- C. The governing board may certify a software program as a CAS if the governing board determines 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, in accordance with Sections 309 to 315, inclusive;
 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 governing board; and
 5. It can meet any other requirement set by the governing board.
- D. The governing board may establish one or more sales tax performance standards for Model 3 sellers that meet the eligibility criteria set by the governing board and that

1 developed a proprietary system to determine the amount of sales and use tax due on
2 transactions.

ARTICLE VI
MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES
TAX COLLECTION

Section 601: MONETARY ALLOWANCE UNDER MODEL 1

- A. Each member state shall provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract between the governing board and the CSP. The details of the monetary allowance will be provided through the contract process. The governing board shall require that such allowance be funded entirely from money collected in Model 1.
- B. The contract between the governing board and a CSP may base the monetary allowance to a CSP on one or more of the following:
1. A base rate that applies to taxable transactions processed by the CSP.
 2. For a period not to exceed twenty-four 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 for each member state for which the seller does not have a requirement to register to collect the tax.

Section 602: 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 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 months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax

- 1 revenue generated for a member state by the voluntary seller for each member state
2 for which the seller does not have a requirement to register to collect the tax.
- 3 2. Following the conclusion of the twenty-four month period, a seller will only be
4 entitled to a vendor discount afforded under each member state's law at the time the
5 base rate expires.

6

7 **Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER**
8 **SELLERS THAT ARE NOT UNDER MODELS 1 OR 2**

9 The member states anticipate that they will provide a monetary allowance to sellers under Model
10 3 and to all other sellers that are not under Models 1 or 2 based on the following:

- 11 A. For a period not to exceed twenty-four months following a voluntary seller's registration
12 through the Agreement's central registration process, a percentage of tax revenue
13 generated for a member state by the voluntary seller for each member state for which the
14 seller does not have a requirement to register to collect the tax.
- 15 B. Vendor discounts afforded under each member state's law.

1 ARTICLE VII
2 AGREEMENT ORGANIZATION
3

4 **Section 701: EFFECTIVE DATE**

5 The Agreement shall become binding and take effect when at least ten states comprising at least twenty
6 percent of the total population, as determined by the 2000 Federal census, of all states imposing a state
7 sales tax have petitioned for membership and have been found to be in compliance with the
8 requirements of the Agreement pursuant to Section 805. The Agreement shall take effect on the first
9 day of a calendar quarter at least sixty days after the tenth state is found in compliance, but cannot take
10 effect prior to July 1, 2003.
11

12 **Section 702: APPROVAL OF INITIAL STATES**

13 Prior to the effective date of the Agreement, a state may seek membership by forwarding a petition for
14 membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing
15 States. A petitioning state shall also provide a copy of its petition for membership and certificate of
16 compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also
17 post a copy of its petition for membership and certificate of compliance on that state's web site.
18

19 Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall
20 convene and preside over a meeting of the petitioning states for the purpose of determining if the
21 petitioning states are in compliance with the Agreement. An affirmative vote of three-fourths of the
22 other petitioning states is necessary for a petitioning state to be found in compliance with the
23 Agreement. A petitioning state shall not vote on its own petition for membership.
24

25 The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's
26 petition for membership.
27

28 **Section 703: STREAMLINED SALES TAX IMPLEMENTING STATES**

1 A. From the time of ratification of this Agreement until the provisions of Section 701 have been met, the
2 Streamlined Sales Tax Implementing State shall maintain responsibility for the Agreement, including
3 the disposition of all proposed amendments to the Agreement.
4

5 B. Amendments to the Agreement considered by the Streamlined Sales Tax Implementing States shall
6 follow the provisions as set forth in Article IX, Section 901.
7

8 C. For a period of not less than six months nor longer than one year after the provisions of Section 701
9 are met, the Streamlined Sales Tax Implementing States shall provide advice to the Governing Board of
10 the Agreement and shall be consulted by the Governing Board before amending the Agreement.
11

1
2
3 **ARTICLE VIII**
4 **STATE ENTRY AND WITHDRAWAL**

5 **Section 801: ENTRY INTO AGREEMENT**

6 After the effective date of the Agreement, a state may apply to become a party to the Agreement by
7 submitting a petition for membership and certificate of compliance to the governing board. The petition
8 for membership shall include such state's proposed date of entry. The petitioning state's proposed date
9 of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on
10 which all provisions necessary for the state to be in compliance with the Agreement are in place and
11 effective.

12
13 The petitioning state shall provide a copy of its petition for membership and the certificate of
14 compliance to each member state when the petitioning state submits its petition for membership to the
15 governing board. A petitioning state shall also post a copy of its petition for membership and certificate
16 of compliance on that state's web site.

17
18 **Section 802: CERTIFICATE OF COMPLIANCE**

19 The certificate of compliance shall be signed by the chief executive of the state's tax agency. The
20 certificate of compliance shall document compliance with the provisions of the Agreement and cite
21 applicable statutes, rules, regulations, or other authorities evidencing such compliance.

22
23 **Section 803: ANNUAL RE-CERTIFICATION OF MEMBER STATES**

24 Each member state shall annually re-certify that such state is in compliance with the Agreement. Each
25 member state shall make a re-certification to the governing board on or before August 1 of each year
26 after the year of the state's entry. In its annual re-certification, the state shall include any changes in its
27 statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the
28 Agreement. The re-certification shall be signed by the chief executive of the state's tax agency.

1 A member state that cannot re-certify its compliance with the Agreement shall submit a statement of
2 non-compliance to the governing board. The statement of non-compliance shall include any action or
3 decision that takes such state out of compliance with the Agreement and the steps it will take to return to
4 compliance. The governing board shall promulgate rules and procedures to respond to statements of
5 noncompliance in accordance with Section 809.

6
7 Each member state shall post its annual re-certification or statement of non-compliance on that state's
8 web site.

9 10 **Section 804: REQUIREMENTS FOR MEMBERSHIP APPROVAL**

11 The governing board shall determine if a petitioning state is in compliance with the Agreement. A three-
12 fourths vote of the entire governing board is required to approve a state's petition for membership. The
13 governing board shall provide public notice and opportunity for comment prior to voting on a state's
14 petition for membership. A state's membership is effective on the proposed date of entry in its petition
15 for membership or the first day of the calendar quarter after its petition is approved by the governing
16 board, whichever is later, and is at least sixty days after its petition is approved.

17 18 **Section 805: COMPLIANCE**

19 A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and
20 policies is substantially compliant with each of the requirements set forth in the Agreement.

21 22 **Section 806: AGREEMENT ADMINISTRATION**

23 Authority to administer the Agreement shall rest with the governing board comprised of representatives
24 of each member state. Each member state may appoint up to four representatives to the governing
25 board. The representatives shall be members of the executive or legislative branches of the state. Each
26 member state shall be entitled to one vote on the governing board. Except as otherwise provided in the
27 Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of
28 the governing board present and voting. The governing board shall determine its meeting schedule, but
29 shall meet at least once annually. The governing board shall provide a public comment period at each
30 meeting to provide members of the public an opportunity to address the board on matters relevant to the

1 administration or operation of the Agreement. The governing board shall provide public notice of its
2 meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules
3 establishing the public notice requirements for holding emergency meetings on less than thirty day's
4 notice. The governing board may meet electronically.
5

6 The governing board is responsible for the administration and operation of the Agreement, including the
7 appointment of all manner of committees. The governing board may employ staff, advisors, consultants
8 or agents. The governing board may promulgate rules and procedures it deems necessary to carry out its
9 responsibilities. The governing board may take any action that is necessary and proper to fulfill the
10 purposes of the Agreement. The governing board may allocate the cost of administration of the
11 Agreement among the member states.
12

13 The governing board may assign committees certain duties, including, but not limited to:

- 14 A. Responding to questions regarding the administration of the Agreement;
 - 15 B. Preparing certification requirements and coordinating the certification process for CSPs;
 - 16 C. Coordinating joint audits;
 - 17 D. Issuing requests for proposals;
 - 18 E. Coordinating contracts with member states and providers; and
 - 19 F. Maintaining records for the governing board.
- 20

21 **Section 807: OPEN MEETINGS**

22 Each meeting of the governing board and the minutes thereof shall be open to the public except as
23 provided herein. Meetings of the governing board may be closed only for one or more of the following:

- 24 A. Personnel issues.
- 25 B. Information required by the laws of any member state to be protected from public disclosure. In
26 the meeting, the governing board shall excuse any attendee to whom confidential taxpayer
27 information cannot be disclosed under the law of any member state.
- 28 C. Proprietary information requested by any business to be protected from disclosure.

1 D. The consideration of issues incident to competitive bidding, requests for information, or
2 certification, the disclosure of which would defeat the public interest in a fair and competitive
3 process.

4 E. The consideration of pending litigation in a member state the discussion of which in a public
5 session would, in the judgment of the member state engaged in the litigation, adversely affect its
6 interests. In the meeting, the governing board shall excuse any attendee to whom confidential
7 taxpayer information cannot be disclosed under the law of any member state.

8 A closed session of the governing board may be convened by the chair or by a majority vote of the
9 governing board. When a closed session is convened, the reason for the closed session shall be noted in
10 a public session. Any actions taken in the closed session shall be reported immediately upon the
11 reconvening of a public session.

12 13 **Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER**

14 With respect to each member state, the Agreement shall continue in full force and effect until a member
15 state withdraws its membership or is expelled. A member state's withdrawal or expulsion cannot be
16 effective until the first day of a calendar quarter after a minimum of sixty days' notice. A member state
17 shall submit notice of its intent to withdraw from the Agreement to the governing board and the chief
18 executive of each member state's tax agency. The member state shall provide public notice of its intent
19 to withdraw and post its notice of intent to withdraw on its web site. The withdrawal by or expulsion of
20 a state does not affect the validity of the Agreement among other member states. A state that withdraws
21 or is expelled from the Agreement remains liable for its share of any financial or contractual obligations
22 that were incurred by the governing board prior to the effective date of that state's withdrawal or
23 expulsion. The appropriate share of any financial or contractual obligation shall be determined by the
24 state and the governing board in good faith based on the relative benefits received and burdens incurred
25 by the parties.

26 27 **Section 809: SANCTION OF MEMBER STATES**

28 If a member state is found to be out of compliance with the Agreement, the governing board may
29 consider sanctions against the state. The sanctions that the governing board may impose include

1 expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of
2 a resolution to sanction a member state for noncompliance with the Agreement shall require the
3 affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of
4 the resolution. The member state that is the subject of the resolution shall not vote on such resolution.
5 Resolutions seeking sanctions shall be acted upon by the governing board within a reasonable period of
6 time as set forth in the governing board's rules. The governing board shall provide an opportunity for
7 public comment prior to action on a proposed sanction.

8 9 **Section 810: STATE AND LOCAL ADVISORY COUNCIL**

10 The governing board shall create a State and Local Government Advisory Council to advise the
11 governing board on matters pertaining to the administration of the Agreement. The membership shall
12 include at least one representative from each state that is a participating member of the Streamlined
13 Sales Tax Project pursuant to the Operating Rules of the Project as designated by that state. In addition,
14 the governing board shall appoint local government officials to the State and Local Government
15 Advisory Council. The governing board may appoint other state officials as it deems appropriate.
16 Matters pertaining to the administration of the Agreement shall include, but not be limited to, admission
17 of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement.
18 The State and Local Government Advisory Council shall advise and assist the Business and Taxpayer
19 Advisory Council in the functions noted in Section 811.

20 21 **Section 811: BUSINESS AND TAXPAYER ADVISORY COUNCIL**

22 The governing board shall create a Business and Taxpayer Advisory Council from the private sector to
23 advise the governing board on matters pertaining to the administration of the Agreement. These matters
24 shall include, but not be limited to, admission of states ~~into membership, noncompliance,~~ and
25 interpretations, revisions or additions to the Agreement. The Business and Taxpayer Advisory Council
26 shall advise and assist the State and Local Government Advisory Council in the functions noted in
27 Section 810.

ARTICLE IX
AMENDMENTS AND INTERPRETATIONS

Section 901: AMENDMENTS TO AGREEMENT

Amendments to the Agreement may be brought before the governing board by any member state. The Agreement may be amended by a three-fourths vote of the entire governing board. The governing board shall give the Governor and presiding officer of each house of each member state notice of proposed amendments to the Agreement at least sixty days prior to consideration. The governing board shall give public notice of proposed amendments to the Agreement at least sixty days prior to consideration. The governing board shall provide an opportunity for public comment prior to action on an amendment to the Agreement.

Section 902: INTERPRETATIONS OF AGREEMENT

Matters involving interpretation of the Agreement may be brought before the governing board by any member state or by any other person. All interpretations shall require a three-fourths vote of the entire governing board. The governing board shall publish all interpretations issued under this section. Interpretations shall be considered part of the Agreement and shall have the same effect as the Agreement. The governing board shall act on requests for interpretation of the Agreement within a reasonable period of time and under guidelines and procedures as set forth in the governing board's rules. The governing board may determine that it will not issue an interpretation. The governing board shall provide an opportunity for public comment prior to issuing an interpretation of the Agreement.

Section 903: DEFINITION REQUESTS

Any member state or any other person may make requests for additional definitions or for interpretations on how an individual product or service fits within a definition. Requests shall be submitted in writing as determined by the governing board. Such requests shall be referred to the Advisory Council created in Section 810 or other group under guidelines and procedures as set forth in the governing board's rules. The entity to which the request was referred shall post notice of the request and provide for input from the public and the member states as directed by

1 the governing board. Within one hundred eighty days after receiving the request, they shall
2 report to the governing board one of the following recommendations:

- 3 A. That no action be taken on the request;
- 4 B. That a proposed amendment to the Library be submitted;
- 5 C. That an interpretation request be submitted; or
- 6 D. That additional time is needed to review the request.

7

8 If either an amendment or an interpretation is recommended, the entity to which the request was
9 referred shall provide the appropriate language as required by the governing board. The
10 governing board shall take action on the recommendation of the entity to which the request was
11 referred at the next meeting of the governing board pursuant to the notice requirements of
12 Section 806. Action by the governing board to approve a recommendation for no action shall be
13 considered the final disposition of the request. Nothing in this paragraph shall prohibit a state
14 from directly submitting a proposed amendment or an interpretation request to the governing
15 board pursuant to Section 901 or Section 902.

ARTICLE X
ISSUE RESOLUTION PROCESS

Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION

The governing board shall promulgate rules creating an issue resolution process. The rules shall govern the conduct of the process, including the participation by any petitioner, affected state, and other interested party, the disposition of a petition to invoke the process, the allocation of costs for participating in the process, the possible involvement of a neutral third party or non-binding arbitration, and such further details as the governing board determines necessary and appropriate.

Section 1002: PETITION FOR RESOLUTION

Any member state or person may petition the governing board to invoke the issue resolution process to resolve matters of:

- A. Membership of a state under Article VIII;
- B. Matters of compliance under Section 805;
- C. Possibilities of sanctions of a member state under Section 809;
- D. Amendments to the Agreement under Section 901;
- E. Interpretation issues, including differing interpretations among the member states, under Section 902; or
- F. Other matters at the discretion of the governing board.

Section 1003: FINAL DECISION OF GOVERNING BOARD

The governing board shall consider any recommendations resulting from the issue resolution process before making its decision, which decision shall, as with all other matters under the Agreement, be final and not subject to further review.

Section 1004: LIMITED SCOPE OF THIS ARTICLE

Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or otherwise affect, in any manner, any right or duty that any person or governmental body has under the laws of any member state or local government body. This Article is specifically

1 subject to the terms of Article XI and shall not be construed as taking precedence over Article
2 XI.

1 **ARTICLE XI**
2 **RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS**
3

4 **Section 1101: COOPERATING SOVEREIGNS**

5 This Agreement is among individual cooperating sovereigns in furtherance of their governmental
6 functions. The Agreement provides a mechanism among the member states to establish and
7 maintain a cooperative, simplified system for the application and administration of sales and use
8 taxes under the duly adopted law of each member state.
9

10 **Section 1102: RELATIONSHIP TO STATE LAW**

11 No provision of the Agreement in whole or part invalidates or amends any provision of the law
12 of a member state. Adoption of the Agreement by a member state does not amend or modify any
13 law of the state. Implementation of any condition of the Agreement in a member state, whether
14 adopted before, at, or after membership of a state, must be by the action of the member state. All
15 member states remain subject to Article VIII.
16

17 **Section 1103: LIMITED BINDING AND BENEFICIAL EFFECT**

- 18 A. This Agreement binds and inures only to the benefit of the member states. No person,
19 other than a member state, is an intended beneficiary of this Agreement. Any benefit to a
20 person other than a state is established by the laws of the member states and not by the
21 terms of this Agreement.
- 22 B. Consistent with subsection (A), no person shall have any cause of action or defense under
23 the Agreement or by virtue of a member state's approval of the Agreement. No person
24 may challenge, in any action brought under any provision of law, any action or inaction
25 by any department, agency, or other instrumentality of any member state, or any political
26 subdivision of a member state on the ground that the action or inaction is inconsistent
27 with the Agreement.
- 28 C. No law of a member state, or the application thereof, may be declared invalid as to any
29 person or circumstance on the ground that the provision or application is inconsistent
30 with the Agreement.

1

2 **Section 1104: FINAL DETERMINATIONS**

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

1 ARTICLE XII

2 REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

3
4 **Section 1201: REVIEW OF COSTS AND BENEFITS**

5 The governing board will review costs and benefits of administration and collection of sales and
6 use taxes incurred by states and sellers under the existing sales and use tax laws at the time of
7 adoption of the Agreement and the proposed Streamlined Sales Tax Agreement.

APPENDIX A
STREAMLINED SALES AND USE TAX AGREEMENT
PETITION FOR MEMBERSHIP

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;

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

WHEREAS, the State of _____ levies a sales tax and levies a use tax. "Sales tax" means the tax levied under (CITE SPECIFIC STATUTE) and "use tax" means the tax levied under (CITE SPECIFIC STATUTE).

NOW, the undersigned representative hereby petitions the governing board of the Streamlined Sales and Use Tax Agreement (or Co-Chairs of the Streamlined Sales Tax Implementing States) for membership into the Agreement.

NAME

TITLE

STATE OF _____

1
2
3
4

Appendix B
INDEX OF DEFINITIONS

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Prescription	Appendix C, Part II, within health care category
Prewritten computer software	Appendix C, Part II, within computer related category
Private communication service	Article III, Section 315
Product-based exemption	Article II, Section 209
Prosthetic device	Appendix C, Part II, within health care category
Protective equipment	Appendix C, Part II, within clothing category
Purchase price	Appendix C, Part I, 4
Purchaser	Article II, Section 210
Rain check	Appendix C, Part III, for sales tax holidays
Receive and receipt	Article III, Section 311

Registered under this agreement	Article II, Section 211
Rental	Appendix C, Part I, 3
Term	Placement in Agreement
Retail sale	Appendix C, Part I, 5
Sale at retail	Appendix C, Part I, 5
Sales price	Appendix C, Part I, 6
Seller	Article II, Section 212
Service address	Article III, Section 315
Soft drinks	Appendix C, Part II, within food and food products category
Sport or recreational equipment	Appendix C, Part II, within clothing category
State	Article II, Section 213
Tangible personal property	Appendix C, Part I, 7
Tobacco	Appendix C, Part II, within food and food products category
Transportation equipment	Article III, Section 310
Use-based exemption	Article II, Section 214

Appendix C
LIBRARY OF DEFINITIONS

Part I Administrative definitions including tangible personal property. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes.

Part II Product definitions. Terms included in this Part are used to exempt items from sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes these items.

Part III Sales tax holiday definitions. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes during sales tax holidays.

PART I

Administrative Definitions

1. **“Delivery charges”** means charges by the seller of personal property or services 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.

A member state may exclude from “delivery charges” the charges for delivery of “direct mail” if the charges are separately stated on an invoice or similar billing document given to the purchaser.

If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

- a. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

- 1 b. a percentage based on the total weight of the taxable property compared to the
2 total weight of all property in the shipment.

3 The seller must tax the percentage of the delivery charge allocated to the taxable property but
4 does not have to tax the percentage allocated to the exempt property.
5

- 6 2. **"Direct mail"** means printed material delivered or distributed by United States mail or other
7 delivery service to a mass audience or to addressees on a mailing list provided by the
8 purchaser or at the direction of the purchaser when the cost of the items are not billed directly
9 to the recipients. "Direct mail" includes tangible personal property supplied directly or
10 indirectly by the purchaser to the direct mail seller for inclusion in the package containing the
11 printed material. "Direct mail" does not include multiple items of printed material delivered
12 to a single address.
13

- 14 3. **"Lease or rental"** means any transfer of possession or control of tangible personal property
15 for a fixed or indeterminate term for consideration. A lease or rental may include future
16 options to purchase or extend.

17 A. Lease or rental does not include:

- 18 1. A transfer of possession or control of property under a security agreement or deferred
19 payment plan that requires the transfer of title upon completion of the required
20 payments;
21 2. A transfer or possession or control of property under an agreement that requires the
22 transfer of title upon completion of required payments and payment of an option price
23 does not exceed the greater of one hundred dollars or one percent of the total required
24 payments; or
25 3. Providing tangible personal property along with an operator for a fixed or
26 indeterminate period of time. A condition of this exclusion is that the operator is
27 necessary for the equipment to perform as designed. For the purpose of this
28 subsection, an operator must do more than maintain, inspect, or set-up the tangible
29 personal property.

- 1 B. Lease or rental does include agreements covering motor vehicles and trailers where the
2 amount of consideration may be increased or decreased by reference to the amount
3 realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).
- 4 C. This definition shall be used for sales and use tax purposes regardless if a transaction is
5 characterized as a lease or rental under generally accepted accounting principles, the
6 Internal Revenue Code, the [state commercial code], or other provisions of federal, state
7 or local law.
- 8 D. This definition will be applied only prospectively from the date of adoption and will
9 have no retroactive impact on existing leases or rentals. This definition shall neither
10 impact any existing sale-leaseback exemption or exclusions that a state may have, nor
11 preclude a state from adopting a sale-leaseback exemption or exclusion after the
12 effective date of the Agreement.
- 13
- 14 4. **"Purchase price"** applies to the measure subject to use tax and has the same meaning as
15 sales price.
- 16
- 17 5. **"Retail sale or Sale at retail"** means any sale, lease, or rental for any purpose other than for
18 resale, sublease, or subrent.
- 19
- 20 6. **"Sales price"** applies to the measure subject to sales tax and means the total amount of
21 consideration, including cash, credit, property, and services, for which personal property or
22 services are sold, leased, or rented, valued in money, whether received in money or
23 otherwise, without any deduction for the following:
- 24 A. The seller's cost of the property sold;
- 25 B. The cost of materials used, labor or service cost, interest, losses, all costs of
26 transportation to the seller, all taxes imposed on the seller, and any other expense
27 of the seller;
- 28 C. Charges by the seller for any services necessary to complete the sale, other than
29 delivery and installation charges;
- 30 D. Delivery charges;

1 E. Installation charges;

2 F. The value of exempt personal property given to the purchaser where taxable and
3 exempt personal property have been bundled together and sold by the seller as a
4 single product or piece of merchandise; and

5 G. Credit for any trade-in, as determined by state law.

6 States may exclude from "sales price" the amounts received for charges included in paragraphs
7 (C) through (G) above, if they are separately stated on the invoice, billing, or similar document
8 given to the purchaser.

9 "Sales price" shall not include:

10 A. Discounts, including cash, term, or coupons that are not reimbursed by a third
11 party that are allowed by a seller and taken by a purchaser on a sale;

12 B. Interest, financing, and carrying charges from credit extended on the sale of
13 personal property or services, if the amount is separately stated on the invoice,
14 bill of sale or similar document given to the purchaser; and

15 C. Any taxes legally imposed directly on the consumer that are separately stated on
16 the invoice, bill of sale or similar document given to the purchaser.

17

18 7. **"Tangible personal property"** means personal property that can be seen, weighed,
19 measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible
20 personal property" includes electricity, water, gas, steam, and prewritten computer software.

1 **PART II**
2 **Product Definitions**

3
4 **CLOTHING**

5 "Clothing" means all human wearing apparel suitable for general use. The following list
6 contains examples and is not intended to be an all-inclusive list.

7 A. "Clothing" shall include:

- 8 1. Aprons, household and shop;
- 9 2. Athletic supporters;
- 10 3. Baby receiving blankets;
- 11 4. Bathing suits and caps;
- 12 5. Beach capes and coats;
- 13 6. Belts and suspenders;
- 14 7. Boots;
- 15 8. Coats and jackets;
- 16 9. Costumes;
- 17 10. Diapers, children and adult, including disposable diapers;
- 18 11. Ear muffs;
- 19 12. Footlets;
- 20 13. Formal wear;
- 21 14. Garters and garter belts;
- 22 15. Girdles;
- 23 16. Gloves and mittens for general use;
- 24 17. Hats and caps;
- 25 18. Hosiery;
- 26 19. Insoles for shoes;
- 27 20. Lab coats;
- 28 21. Neckties;
- 29 22. Overshoes;
- 30 23. Pantyhose;

- 1 24. Rainwear;
- 2 25. Rubber pants;
- 3 26. Sandals;
- 4 27. Scarves;
- 5 28. Shoes and shoe laces;
- 6 29. Slippers;
- 7 30. Sneakers;
- 8 31. Socks and stockings;
- 9 32. Steel toed shoes;
- 10 33. Underwear;
- 11 34. Uniforms, athletic and non-athletic; and
- 12 35. Wedding apparel.

13 B. "Clothing" shall not include:

- 14 1. Belt buckles sold separately;
- 15 2. Costume masks sold separately;
- 16 3. Patches and emblems sold separately;
- 17 4. Sewing equipment and supplies including, but not limited to, knitting needles,
18 patterns, pins, scissors, sewing machines, sewing needles, tape measures, and
19 thimbles; and
- 20 5. Sewing materials that become part of "clothing" including, but not limited to, buttons,
21 fabric, lace, thread, yarn, and zippers.

22 **"Clothing accessories or equipment"** means incidental items worn on the person or in
23 conjunction with "clothing." "Clothing accessories or equipment" are mutually exclusive of and
24 may be taxed differently than apparel within the definition of "clothing," "sport or recreational
25 equipment," and "protective equipment." The following list contains examples and is not
26 intended to be an all-inclusive list. "Clothing accessories or equipment" shall include:

- 27 A. Briefcases;
- 28 B. Cosmetics;
- 29 C. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
- 30 D. Handbags;

- 1 E. Handkerchiefs;
- 2 F. Jewelry;
- 3 G. Sun glasses, non-prescription;
- 4 H. Umbrellas;
- 5 I. Wallets;
- 6 J. Watches; and
- 7 K. Wigs and hair pieces.

8 **"Protective equipment"** means items for human wear and designed as protection of the wearer
9 against injury or disease or as protections against damage or injury of other persons or property
10 but not suitable for general use. "Protective equipment" are mutually exclusive of and may be
11 taxed differently than apparel within the definition of "clothing," "clothing accessories or
12 equipment," and "sport or recreational equipment." The following list contains examples and is
13 not intended to be an all-inclusive list. "Protective equipment" shall include:

- 14 A. Breathing masks;
- 15 B. Clean room apparel and equipment;
- 16 C. Ear and hearing protectors;
- 17 D. Face shields;
- 18 E. Hard hats;
- 19 F. Helmets;
- 20 G. Paint or dust respirators;
- 21 H. Protective gloves;
- 22 I. Safety glasses and goggles;
- 23 J. Safety belts;
- 24 K. Tool belts; and
- 25 L. Welders gloves and masks.

26 **"Sport or recreational equipment"** means items designed for human use and worn in
27 conjunction with an athletic or recreational activity that are not suitable for general use. "Sport
28 or recreational equipment" are mutually exclusive of and may be taxed differently than apparel
29 within the definition of "clothing," "clothing accessories or equipment," and "protective

1 equipment." The following list contains examples and is not intended to be an all-inclusive list.

2 "Sport or recreational equipment" shall include:

- 3 A. Ballet and tap shoes;
- 4 B. Cleated or spiked athletic shoes;
- 5 C. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;
- 6 D. Goggles;
- 7 E. Hand and elbow guards;
- 8 F. Life preservers and vests;
- 9 G. Mouth guards;
- 10 H. Roller and ice skates;
- 11 I. Shin guards;
- 12 J. Shoulder pads;
- 13 K. Ski boots;
- 14 L. Waders; and
- 15 M. Wetsuits and fins.

16

17 **COMPUTER RELATED**

18 "Computer" means an electronic device that accepts information in digital or similar form and
19 manipulates it for a result based on a sequence of instructions.

20 "Computer software" means a set of coded instructions designed to cause a "computer" or
21 automatic data processing equipment to perform a task.

22 "Delivered electronically" means delivered to the purchaser by means other than tangible
23 storage media.

24 "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
25 electromagnetic, or similar capabilities.

26 "Load and leave" means delivery to the purchaser by use of a tangible storage media where the
27 tangible storage media is not physically transferred to the purchaser.

28 "Prewritten computer software" means "computer software," including prewritten upgrades,
29 which is not designed and developed by the author or other creator to the specifications of a
30 specific purchaser. The combining of two or more "prewritten computer software" programs or

1 prewritten portions thereof does not cause the combination to be other than "prewritten computer
2 software." "Prewritten computer software" includes software designed and developed by the
3 author or other creator to the specifications of a specific purchaser when it is sold to a person
4 other than the specific purchaser. Where a person modifies or enhances "computer software" of
5 which the person is not the author or creator, the person shall be deemed to be the author or
6 creator only of such person's modifications or enhancements. "Prewritten computer software" or
7 a prewritten portion thereof that is modified or enhanced to any degree, where such modification
8 or enhancement is designed and developed to the specifications of a specific purchaser, remains
9 "prewritten computer software;" provided, however, that where there is a reasonable, separately
10 stated charge or an invoice or other statement of the price given to the purchaser for such
11 modification or enhancement, such modification or enhancement shall not constitute "prewritten
12 computer software."

13 A member state may exempt "prewritten computer software" "delivered electronically" or by
14 "load and leave."

16 **FOOD AND FOOD PRODUCTS**

17 **"Alcoholic Beverages"** means beverages that are suitable for human consumption and contain
18 one-half of one percent or more of alcohol by volume.

19 **"Candy"** means a preparation of sugar, honey, or other natural or artificial sweeteners in
20 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
21 drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no
22 refrigeration.

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

25 A. Contains one or more of the following dietary ingredients:

- 26 1. A vitamin;
- 27 2. A mineral;
- 28 3. An herb or other botanical;
- 29 4. An amino acid;
- 30 5. A dietary substance for use by humans to supplement the diet by increasing the total
31 dietary intake; or

- 1 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
2 described in above; and
- 3 B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not
4 intended for ingestion in such a form, is not represented as conventional food and is not
5 represented for use as a sole item of a meal or of the diet; and
- 6 C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts"
7 box found on the label and as required pursuant to 21 C.F.R § 101.36.
- 8 **"Food and food ingredients"** means substances, whether in liquid, concentrated, solid, frozen,
9 dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed
10 for their taste or nutritional value. "Food and food ingredients" does not include "alcoholic
11 beverages" or "tobacco." A member state may exclude "candy," "dietary supplements" and
12 "soft drinks" from this definition, which items are mutually exclusive of each other.
- 13 Notwithstanding the foregoing requirements of this definition or any other provision of the
14 Agreement, a member state may maintain its tax treatment of food in a manner that differs from
15 the definitions provided herein, provided its taxation or exemption of food is based on a
16 prohibition or requirement of that state's Constitution that exists on the effective date of the
17 Agreement.
- 18 **"Food sold through vending machines"** means food dispensed from a machine or other
19 mechanical device that accepts payment.
- 20 **"Prepared food"** means:
- 21 A. Food sold in a heated state or heated by the seller;
- 22 B. Two or more food ingredients mixed or combined by the seller for sale as a single item;
23 or
- 24 C. Food sold with eating utensils provided by the seller, including plates, knives, forks,
25 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
26 packaging used to transport the food.
- 27 "Prepared food" in B does not include food that is only cut, repackaged, or pasteurized by the
28 seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring
29 cooking by the consumer as recommended by the Food and Drug Administration in chapter 3,
30 part 401.11 of its Food Code so as to prevent food borne illnesses.

1
2 The following items may be taxed differently than "prepared food" and each other, if sold
3 without eating utensils provided by the seller, but may not be taxed differently than the same
4 item when classified under "food and food ingredients."

- 5 1. Food sold by a seller whose proper primary NAICS classification is manufacturing in
6 sector 311, except subsector 3118 (bakeries).
7 2. Food sold in an unheated state by weight or volume as a single item.
8 3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries,
9 donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

10 Substances within "food and food ingredients" may be taxed differently if sold as "prepared
11 food." A state shall tax or exempt from taxation "candy," dietary supplements," and "soft
12 drinks" that are sold as "prepared food" in the same manner as it treats other substances that are
13 sold as "prepared food."

14 "Soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft
15 drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk
16 substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

17 "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains
18 tobacco.
19

20 HEALTH-CARE

21 "Drug" means a compound, substance or preparation, and any component of a compound,
22 substance or preparation, other than "food and food ingredients," "dietary supplements" or
23 "alcoholic beverages:"

- 24 A. Recognized in the official United State Pharmacopoeia, official Homeopathic
25 Pharmacopoeia of the United States, or official National Formulary, and supplement to
26 any of them; or
27 B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
28 C. Intended to affect the structure or any function of the body.

29 A member state may independently:

- 1 A. Limit the definition of "drug" to human use (as opposed to both human and animal use)
- 2 in the administration of its exemption;
- 3 B. Draft its exemption for "drug" to specifically add insulin and/or medical oxygen so that
- 4 no prescription is required, even if a state requires a prescription under its exemption for
- 5 drugs;
- 6 C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and
- 7 other medical facilities;
- 8 D. Determine the taxability of free samples of drugs; and
- 9 E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment
- 10 of bundled transactions is not otherwise defined in the Agreement.

11 **"Durable medical equipment"** means equipment including repair and replacement parts for
12 same, but does not include "mobility enhancing equipment," which:

- 13 A. Can withstand repeated use; and
- 14 B. Is primarily and customarily used to serve a medical purpose; and
- 15 C. Generally is not useful to a person in the absence of illness or injury; and
- 16 D. Is not worn in or on the body.

17 A member state may limit its exemption to "durable medical equipment" used for home use only.
18 A member state may limit the application of this definition by requiring a "prescription," or limit
19 an exemption based on Medicare or Medicaid payments or reimbursements.

20 **"Grooming and hygiene products"** are soaps and cleaning solutions, shampoo, toothpaste,
21 mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items
22 meet the definition of "over-the-counter-drugs."

23 **"Mobility enhancing equipment"** means equipment including repair and replacement parts to
24 same, but does not include "durable medical equipment," which:

- 25 A. Is primarily and customarily used to provide or increase the ability to move from one
- 26 place to another and which is appropriate for use either in a home or a motor vehicle;
- 27 and
- 28 B. Is not generally used by persons with normal mobility; and
- 29 C. Does not include any motor vehicle or equipment on a motor vehicle normally provided
- 30 by a motor vehicle manufacturer.

1 A member state may limit the application of this definition by requiring a "prescription," or limit
2 an exemption based on Medicare or Medicaid payments or reimbursements.

3 **"Over-the-counter-drug"** means a drug that contains a label that identifies the product as a drug
4 as required by 21 C.F.R. § 201.66. A member state may exclude "grooming and hygiene
5 products" from this definition. The "over-the-counter-drug" label includes:

- 6 A. A "Drug Facts" panel; or
- 7 B. A statement of the "active ingredient(s)" with a list of those ingredients contained in the
8 compound, substance or preparation.

9 **"Prescription"** means an order, formula or recipe issued in any form of oral, written, electronic,
10 or other means of transmission by a duly licensed practitioner authorized by the laws of the
11 member state.

12 **"Prosthetic device"** means a replacement, corrective, or supportive device including repair and
13 replacement parts for same worn on or in the body to:

- 14 A. Artificially replace a missing portion of the body;
- 15 B. Prevent or correct physical deformity or malfunction; or
- 16 C. Support a weak or deformed portion of the body.

17 A member state may exclude any or all of the following from the definition of "prosthetic
18 device:"

- 19 A. Corrective eyeglasses;
- 20 B. Contact lenses;
- 21 C. Hearing aids; and
- 22 D. Dental prosthesis.

23 A member state may limit the application of this definition by requiring a "prescription," or limit
24 an exemption based on Medicare or Medicaid payments or reimbursements.

25

1
2 **PART III**

3 **Sales Tax Holiday Definitions**
4

5 **"Eligible property"** means an item of a type, such as clothing, that qualifies for a sales tax
6 holiday exemption in a member state.

7 **"Layaway sale"** means a transaction in which property is set aside for future delivery to a
8 customer who makes a deposit, agrees to pay the balance of the purchase price over a
9 period of time, and, at the end of the payment period, receives the property. An order is
10 accepted for layaway by the seller, when the seller removes the property from normal
11 inventory or clearly identifies the property as sold to the purchaser.

12 **"Rain check"** means the seller allows a customer to purchase an item at a certain price at
13 a later time because the particular item was out of stock.
14
15

STREAMLINED SALES AND USE TAX

Timeline

- January 2005** Iowa, Kansas, North Dakota, Oklahoma, South Dakota, Tennessee submit Certificates of Compliance to Co-Chairs Of SSTP Implementing States
- March 2005** Compliance Committee reviews Certificate of Compliance of Six (6) states filing in January
- Schedule series of compliance meetings to review state certificate of Compliance, public comments and state responses to comments
- Other states filing Certificates of Compliance
- File Articles of Incorporation – Spring '05
- File IRS 501(c)(6) application – Spring '05
- May 2005** May 1 – deadline to file Certificate of Compliance for consideration at 7/1/05 meeting
- May 31 – deadline for written public comment on Certificates of Compliance filed May 1, 2005
- June 2005** Compliance committee holds final compliance meetings to Review state certificates of compliance, public comments and State responses to comments
- Compliance committee makes recommendation on whether State is in substantial compliance – and presents recommendations to petitioning states at July 1 meeting
- Payments of \$20,000 application fee/dues by June 30, 2005 for States in compliance July 1, 2005
- July 2005** Meeting of Petitioning States
- Vote on each state at conclusion of all presentations
- Select nominating committee to nominate slate at October 1 Meeting of Governing Board
- Select executive search committee for Executive Director
- Saturday, October 1, 2005**
- Governing Board Organizational Meeting**
- Approve Bylaws
 - Elect Executive Committee
 - Appoint Committees
 - Consider pending certificates of compliance

1 **PROPOSED CHANGES TO DRAFT BYLAWS* OF THE STREAMLINED**
2 **SALES TAX GOVERNING BOARD, INC.**

3 A Nonprofit Corporation

4 (*as amended in Chicago, November 16, 2004)

5
6 **Article One – Name and Purpose**

7 **Section 1.** The name of this organization shall be the Streamlined Sales Tax Governing
8 Board, Inc., and its membership shall be determined under these bylaws as set forth in Article
9 Three.

10 **Section 2.** The object and purpose of this organization shall be to administer and operate
11 the Streamlined Sales and Use Tax Agreement as Amended (the "Agreement") under authority
12 conferred in the Agreement.

13 **Section 3.** The Streamlined Sales Tax Governing Board, Inc. (hereinafter referred to as
14 "Governing Board") may take any action that is necessary and proper to fulfill the purposes of the
15 Agreement including but not limited to employing staff, advisors, consultants or agents and
16 allocating the cost of administering the Agreement among the Member States. Procedures for
17 amending the Agreement are contained in the Agreement.

18
19 **Article Two – Offices**

20 **Section 1. Offices.** The principal office of the Governing Board will be in the
21 State of XXXXX , located in the City of XXXXX County of XXXXX. The Governing
22 Board may have such other offices, either within or out of the State of XXXXX as may
23 be necessary to conduct the business of the corporation.

24 **Section 2. Records.** Records of all transactions and meetings of the Governing
25 Board and Executive Committee, as well as all corporate records shall be maintained at
26 the principal office.

27
28 **Article Three - Membership**

29 **Section 1. Eligibility and Requirements.** Membership on the Governing Board
30 shall be open to any state of the United States of America and the District of Columbia
31 that is in compliance with the Agreement as provided in Section 805. Any such entity
32 desiring membership must submit a petition for membership and a Certificate of
33 Compliance to the Governing Board. The application must be in accordance with
34 Sections 801 through 804 of the Agreement. After approval of a state's petition for

1 membership, such state shall be called a Member State. Each Member State shall
2 annually re-certify that such state is in compliance with all terms of Agreement pursuant
3 to section 803.

4 **Section 2.** Member States must pay the annual cost allocation, hereafter referred to
5 as dues, adopted at an annual meeting of the Governing Board in order to remain in good
6 standing.

7 **Section 3.** *Number of Representatives to Governing Board.* Each Member State
8 may appoint up to four representatives to the Governing Board as described in section
9 806 of the Agreement. Each Member State shall have only one vote.

10 **Section 4.** *Expulsion or Withdrawal.* Any Member State failing to properly comply
11 with the terms of the Agreement or failing to pay the annual cost allocation may be
12 expelled upon action of the Governing Board. Member States may also be permitted to
13 withdraw from the Governing Board. Both expulsion and withdrawal are described in the
14 Agreement, Section 808.

15 16 **Article Four - Meetings of the Governing Board**

17 **Section 1.** *Quorum.* A two-thirds majority of the Member States shall constitute a
18 quorum. A quorum is required to conduct the business of Governing Board at any
19 meeting. For the purposes of determining whether a quorum is established, at least one
20 representative of a Member State must be participating in the meeting, either in person or
21 electronically.

22 **Section 2.** *Annual Meeting.* An annual meeting of the members of Governing Board
23 shall be held once each year in a Member State for the purpose of electing Officers and
24 Executive Committee Directors, for approving an annual budget, and for the transaction
25 of such other business as may come before the meeting. The annual meeting shall be
26 held at such time and place as determined by the Executive Committee. Notice
27 provisions in Section 5 of this Article apply.

28 **Section 3.** *Special Meetings.* Special meetings of the Governing Board may be
29 called by the Officers, the Executive Committee, or by petition of forty percent of
30 Member States. Such meetings shall be held in a Member State at such time and place as

1 determined by the Executive Committee. Notice provisions in Section 5 of this Article
2 apply.

3 **Section 4. *Emergency Meetings.*** Emergency meetings of the Governing Board may
4 be called by the President, the Executive Committee, or by petition of forty percent of
5 Member States. Such meetings shall be held at such time and place as determined by
6 those who called the meeting. The purpose of the meeting must be contained in the
7 notice, and no other business may be transacted. Electronic participation will be
8 allowed. The thirty day notice requirements in Section 5 may be waived, although each
9 Member State must be notified, and public notice must be given as far in advance as
10 possible.

11 **Section 5. *Notice of Meetings.*** Except in the case of an emergency meeting, or a
12 meeting in which the Agreement is to be amended, written notice stating the place, day,
13 and hour of any Special or Annual meeting of the Governing Board shall be delivered 30
14 days in advance by mail or electronically to each Member State entitled to vote at such
15 meeting, and the Executive Committee shall provide public notice not less than thirty
16 days before the date of such meeting. In the case of a special meeting, the notice shall
17 contain a statement of the purpose of the meeting. Notice of any meeting which proposes
18 to amend the Agreement must be given 60 days in advance and must follow the
19 procedures outlined in Section 901 of the Agreement.

20 **Section 6. *Voting Rights.*** Each Member State of the Governing Board shall be
21 entitled to one vote on each matter submitted to a vote at a meeting. For a vote for
22 Officers and Executive Committee Directors, each Member State shall have one vote for
23 each Officer or Director to be elected.

24 All actions taken by the Governing Board, except as otherwise provided in the
25 Agreement, shall require an affirmative vote of a majority of those present and voting.

26 A three-fourths vote of the entire Governing Board is required to approve a state's
27 petition for membership, to amend the Agreement, or to act on a request for interpretation
28 of the Agreement. The adoption of a resolution to sanction a Member State for
29 noncompliance with the Agreement shall require the affirmative vote of three-fourths of
30 the entire Governing Board, excluding the state that is the subject of the resolution.

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1 **Section 4. Succession.** *When possible, the Nominating Committee shall put forth a*
2 *slate of candidates for the offices of President, First Vice-President and Second Vice-*
3 *President that allows for the succession of officers from Second Vice-President to First*
4 *Vice-President to President, subject to election by the Governing Board. Nothing in this*
5 *section shall prevent an officer from serving more than one term in the same office, but in*
6 *no case shall an individual serve more than 3 years as provided in Section 2. Nothing in*
7 *this section shall prevent the Nominating Committee from altering this planned*
8 *succession if circumstances require.*

9 **Section 5. Resignation.** ~~The~~ Officers may resign from the office without having to
10 resign as representatives to the Governing Board. They may not remain on the Executive
11 Committee.

12 **Section 6. Compensation.** Officers shall not, by virtue of the office, be entitled
13 to receive any salary or compensation from the Governing Board, but nothing shall be
14 construed to prevent any officer from receiving reimbursement for any expenses incurred
15 on behalf of Governing Board. No reimbursement for expenses shall be paid to Officers
16 unless approved by the Executive Committee by majority vote.

17 18 **Article Six – Executive Committee**

19 **Section 1. Powers and Duties.** The general affairs of the Governing Board shall
20 be managed by an Executive Committee in accordance with policies approved by the
21 Governing Board. The Executive Director of Governing Board shall be an ex officio
22 member of the Executive Committee with no voting rights. The Executive Committee is
23 granted authority to:

- 24 1. Appoint an executive director of the Governing Board for such term as the Executive
25 Committee shall deem appropriate and to fix compensation for the executive director
26 and any and all staff determined to be necessary to conduct the business of the
27 Governing Board.
- 28
29 2. Fix the duties and responsibilities of the executive director, and through the executive
30 director, the work, policies and compensation of subordinates.
- 31
32 3. Provide for the raising of revenue, other than dues, and the discharge of obligations
33 incurred by its employees.
- 34

- 1 4. Prepare an annual budget for the operation of the organization and submit it to the
- 2 Governing Board for approval.
- 3
- 4 5. Provide for the regular dissemination of information to the membership, the
- 5 Governing Board and to the public.
- 6
- 7 6. Enter into contracts and obligations for the attainment of the ends and purposes of the
- 8 Governing Board in areas specifically delegated by the Governing Board and in
- 9 accordance with their policies.
- 10

11 **Section 2. Number and Terms.** There shall be five Directors on the Executive
12 Committee in addition to the four Officers. The term of office for a Director shall be two
13 years. Directors and Officers will be elected annually at the Annual Meeting of the
14 Governing Board. Three Directors will be elected in odd-numbered years, two directors
15 in even-numbered years, except that in the year the Governing Board is formed, all five
16 Directors will be elected but the Directors whose terms would ordinarily expire the year
17 following formation of the Governing Board will be elected for one year terms. No
18 Director may serve more than two complete two-year consecutive terms, except those
19 Directors filling an unexpired term or an initial one year term shall be eligible to serve a
20 full term if elected. All Directors will serve until their respective successors are elected.

21 **Section 3. Representation of Member States.** The Nominating Committee shall
22 assure geographic representation and diversity on the slate of Officers and Directors for
23 the Executive Committee.

24 **Section 4. Qualifications.** Any duly appointed representative of a Member State is
25 eligible to serve as a Director or Officer, except that no more than one Officer or Director
26 shall be elected from a Member State at any given time.

27 **Section 5. Regular Meetings.** The Executive Committee shall meet each calendar
28 quarter unless the President of Governing Board determines that more frequent meetings
29 are needed. These meetings shall be at such times and at such places as designated by the
30 President of Governing Board. Notice of meetings shall be given in accordance with
31 Section 7 in these bylaws.

32 **Section 6. Special Meetings.** Special meetings of the Executive Committee may be
33 called by the President. The time and place of special meetings shall be fixed by the
34 President, and if desirable, may be held via teleconference. Notice of special meetings

1 must be given 10 days in advance to the public, Executive Committee and to the Member
2 States. The meeting notice must include the items to be discussed and no other business
3 may be transacted. In case of an emergency the 10 day notice requirement may be
4 waived, although every member of the Executive Committee must be notified, and notice
5 to the Member States and the public must be given as far in advance as possible.

6 **Section 7. Notice.** The Executive Committee members shall be given at least 30
7 days notice prior to any regular meeting. Public notice shall also be given 30 days in
8 advance of the meeting. Any Officer or Director may waive notice of a meeting. Notice
9 requirements for special meetings are included in Section 6.

10 **Section 8. Voting.** Each Director shall have one vote.

11 **Section 9. Manner of Acting.** Five affirmative votes shall be required to approve
12 any action of the Executive Committee.

13 **Section 10. Vacancies.** Any Officer or Director's position becoming vacant
14 between annual meetings shall be filled by the Executive Committee from
15 recommendations of the Nominating Committee.

16 17 **Article Seven – Standing Committees of the Governing Board**

18 **Section 1. Nominating Committee.** The Conforming States Committee shall serve as
19 the Nominating Committee to present the first slate of Officers and Directors to the
20 Governing Board. Thereafter, the Governing Board shall elect a Nominating Committee
21 of 8 persons at the Annual Meeting from a multiple slate of nominees representative of
22 the Member States. The President shall chair the Nominating Committee once elected.

23 Nominating committee members serve a one-year term. (are they limited to 1 term?)

24 The Nominating Committee shall actively seek candidates for nomination as Officers
25 and Directors. The Nominating Committee shall present a single slate of Officers and
26 Directors of the Executive Committee to the members voting at the annual meeting.
27 Candidates for Officers or Directors may also be nominated from the floor at the annual
28 meeting, with the consent of the person being nominated, and are not limited to those
29 recommended by the Nominating Committee. Any nomination from the floor must be in
30 accordance with Article VI, Section 4 (Qualifications).

1 In the event of a vacancy between annual meetings, the Nominating Committee shall
2 make recommendations to the Executive Committee to fill vacant Director or Nominating
3 Committee positions. Vacant Officer positions shall be filled in accordance with Article
4 V, Section 3.

5 **Section 2. ~~Membership and Compliance Review and Interpretations Committee.~~**
6 ~~The Membership and Compliance and Interpretations Review~~ Committee has the dual
7 responsibility for (1) recommending rules to the Governing Board to respond to
8 statements of non-compliance, certifying to the Governing Board applications of states
9 for compliance with the Agreement, maintaining a Compliance Review Guide, reviewing
10 all compliance review reports to determine any needs for reassessment, to recommend
11 findings of compliance or non-compliance to the Governing Board, and such other
12 responsibilities as specified in the Agreement or assigned to them by the Executive
13 Committee; (2) *making recommendations to the Governing Board on matters involving*
14 *interpretations, definitions, revisions or additions to the Agreement. Any request for*
15 *interpretation or definitions presented to the Governing Board shall be referred to this*
16 *Committee and public hearings held prior to issuing a recommendation. The Committee*
17 *may seek the advice of the Advisory Councils on these matters prior to adopting a*
18 *recommendation for the Governing Board.*

19 The President, with the approval of the Executive Committee, shall appoint a
20 ~~Membership and Compliance Review~~ Committee Chair and six committee members ~~The~~
21 ~~committee members shall be selected~~ from the membership of Governing Board.

22 **Section 3. Finance Committee.** The Finance Committee has the responsibility to
23 prepare an annual budget, monitor finances, review contracts, establish banking
24 procedures and other financial policies, and recommend cost allocations for Member
25 States for the Governing Board's approval. The President shall appoint a Finance Chair
26 from the Executive Committee membership. The Chair shall select additional committee
27 members to serve on the Finance Committee. The committee members shall be selected
28 from the membership of the Governing Board. Size of committee?

29 **Section 4. Issues Resolution Committee.** *The Issue Resolution Committee has the*
30 *responsibility to promulgate rules and to implement the issue resolution process in*
31 *Article X of the Agreement. The President, with the approval of the Executive*

1 *Committee, shall appoint an Issue and one member shall be designated as chair. The*
2 *chair and committee members shall be selected from the membership of the Governing*
3 *Board.*

4 **Section 5. Other Committees.** The President, with the approval of the Executive
5 Committee, may establish such other standing or ad hoc committees as from time to time
6 are deemed necessary or desirable, and may, with the approval of the Executive
7 Committee, appoint Chairs to such Committees.

8 **Section 6. Open Meetings, Notice Provisions.** *Except in circumstances permitted by*
9 *the Agreement, all meetings of standing or ad hoc committees of the Governing Board*
10 *shall be open meetings and shall provide for public comment. Advance notice of*
11 *meetings, including an agenda, shall be given to committee members, the Governing*
12 *Board, the Advisory Councils and the interested public.*

13 14 **Article Eight – Advisory Councils**

15 16 **A. State and Local Advisory Council.**

17 **Section 1. Purpose.** The Governing Board shall create a State and Local
18 Advisory Council to advise it on matters pertaining to the administration of the
19 Agreement including but not limited to admission of states into membership,
20 noncompliance, interpretations, and revision or additions to the Agreement. The
21 Governing Board, *working through its committees,* shall solicit, consider and respond to
22 Council positions on these matters.

23 The Council also provides a forum for state and local government officials not
24 represented on the Governing Board to express their ideas, concerns and have a formal
25 process to bring those concerns to the Governing Board.

26 **Section 2. Membership.** The membership shall consist of one representative
27 from each state that is a participating member of the Streamlined Sales Tax Project,
28 designated by the state as outlined in the Agreement.

29 *In addition,* the Governing Board shall appoint 3 representatives nominated from
30 each of the following organizations to represent local government on the Council: U.S
31 Conference of Mayors, National League of Cities, National Association of Counties, and
32 the Government Finance Officers Association.

1 The Governing Board may appoint other state and local officials to serve on the
2 Council as it deems appropriate or necessary.

3 **Section 3. Officers.** The President, with the consent of the Executive Committee,
4 shall appoint from among this group a Chair and Vice Chair of this Advisory Council to
5 serve a one year term. An individual may serve no more than 2 consecutive terms as
6 Chair or Vice-Chair, except to fill an unexpired term. The Chair and Vice-Chair will
7 serve as *ex officio* members of the Governing Board, without a vote.

8 **Section 4. Rules of Operation.** The Council will adopt Rules of Procedure which
9 may include establishment of committees or workgroups, decision-making processes and
10 setting the Council agenda. ~~Such rules must provide for open meetings, public comment,~~
11 ~~public notice that is consistent with the Governing Board.~~

12 **Section 5. Agenda Setting.** The Council will consider and respond to those matters
13 referred to it from the Governing Board *or its committees*. In addition, the Council may
14 recommend items to the Governing Board for consideration. The Governing Board shall
15 give due consideration to the positions of the Council.

16 **Section 6. Relationship to Business and Taxpayer Advisory Council.** The State and
17 Local Advisory Council shall seek the advice of and respond to the Business and
18 Taxpayer Advisory Council on any item pertaining to the business community, prior to
19 formulating a recommendation to the Governing Board *or its committees*.

20
21 **B. Business and Taxpayer Advisory Council.**

22 **Section 1. Purpose.** The Governing Board shall create a Business and Taxpayer
23 Advisory Council with membership from the private sector to advise it on matters
24 pertaining to the administration of the Agreement including but not limited to admission
25 of states into membership, noncompliance, interpretations, and revision or additions to
26 the Agreement. The Governing Board *and its committees* shall solicit, consider and
27 respond to Council positions on these matters.

28 The Council also provides a forum for the private business sector to express their
29 ideas, concerns and have a formal process to bring those concerns to the Governing
30 Board.

1 **Section 2. Membership.** Membership on this Council shall be open to any seller or
2 person subject to sales tax and organization representing such sellers or persons including
3 an individual, business, association, organization of businesses or practitioner wishing to
4 participate. The Council should recruit its members from companies of all sizes and
5 industry types in order to be representative of the national business community.

6 **Section 3. Rules of Operation and Organizational Structure.** The Council shall
7 adopt Bylaws and Rules of Procedure *which may include establishment of a Board of*
8 *Directors*, committees or workgroups, decision-making processes and setting the Council
9 agenda. The Board of Directors of the Council shall be representative of the diversity of
10 its membership.

11 **Section 4. Officers.** The Board of Directors of the Council, in accordance with its
12 Bylaws, will appoint a Chair and Vice Chair of this Advisory Council. The Chair and
13 Vice-Chair will serve as *ex officio* members of the Governing Board, without vote.

14 **Section 5. Agenda Setting.** The Business and Taxpayer Advisory Council will
15 consider and respond to those matters referred to it from the Governing Board *and its*
16 *committees*. In addition, the Council may recommend items to the Governing Board for
17 consideration and response. The Governing Board shall give due consideration to the
18 positions of the Council.

19 **Section 6. Relationship to State and Local Advisory Council.** The Business and
20 Taxpayer Advisory Council shall seek the advice of and respond to the State and Local
21 Advisory Council on any item pertaining to the business community or tax administration
22 prior to formulating a recommendation to the Governing Board *or its committees*.

23
24 **Article Nine— Procedures for Adopting/Amending Bylaws**

25 **Section 1. Adoption of Bylaws.** When at least ten states comprising at least twenty
26 percent of the total population of all states imposing a state sales tax have petitioned the
27 Streamlined Sales Tax Implementing States (hereinafter referred to as SSTIS) and are
28 found to be in compliance with the Agreement pursuant to Section 805, the Governing
29 Board may be formed by adopting these bylaws at an annual meeting as described in
30 Article Four.

1 **Section 2. *Bylaw Amendments.*** These bylaws may be amended, repealed or altered
2 in whole or in part by a majority of those present and voting at any annual or special
3 meeting of the Governing Board, providing that the amendment, repeal or alteration has
4 been presented in writing not less than thirty days prior to giving notice of the meeting to
5 Member States, the Business and Taxpayer Advisory Council and the State and Local
6 Government Advisory Council.

7
8 **Article Ten - General Powers**

9 **Section 1. *Indemnification.*** The Governing Board and Executive Committee is
10 authorized to provide for the indemnification of damages and expenses incurred by
11 Directors, Officers, employees of the corporation which may arise out of their defense of
12 a legal proceeding brought against them as a result of their duties with the Governing
13 Board.

14 **Section 2. *Fiscal Year.*** The Fiscal Year of the Corporation shall commence on
15 the first day of July and end on the 30th day of June. The books and accounts of the
16 Corporation for each fiscal year shall be examined and audited by Certified Public
17 Accountants selected by the Executive Committee.

18 **Section 3. *Waiver of Notice.*** Whenever notice is required under the provisions of
19 these bylaws, the Articles of Incorporation or the Agreement, a written waiver signed by
20 three-fourths of the Member States is sufficient to supersede the requirement.

21 **Section 4. *Non-discrimination.*** The Governing Board, Officers and Directors,
22 committee members, employees and persons served by the Corporation shall be selected
23 entirely on a non-discriminatory basis.

24 **Section 5. *Contracts.*** The Executive Committee may authorize any officer to
25 enter into any contract or execute and deliver any instrument in the name of and on behalf
26 of Governing Board and such authority may be general or confined to specific instances.

27 **Section 6. *Loans.*** No loans shall be contracted on behalf of Governing Board and
28 no evidence of indebtedness shall be issued in its name unless authorized by the
29 Governing Board. Such authority may be general or confined to specific instances.

1 **Section 7. *Parliamentary Authority.*** Mason's Rules of Parliamentary Procedure
2 shall be the parliamentary authority for all matters of procedure not specifically covered
3 by the bylaws or by specific rules of procedure adopted by the Corporation.
4

5 **Article Eleven– Dissolution**

6 In the event of the dissolution of this Corporation, the assets shall be distributed to
7 the Member States in a manner to be determined by the Governing Board, or distributed
8 to organizations whose exempt purposes are specified in Section 501(c) of the Internal
9 Revenue Code of 1054 and amendments thereto.
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11 Need Certificate of Adoption when we get to finalizing this.
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RBJ Draft
LLC Modified
12/0/31+401/04
Edited by Joan Wagnon 12/31/04

STREAMLINED SALES TAX PROJECT
GOVERNING BOARD
RULES AND PROCEDURES

WORKING DRAFT—~~OCTOBER 14, 2004~~DECEMBER 30, 2004

34 **STREAMLINED SALES TAX PROJECT**
35 **GOVERNING BOARD**

36
37 **RULES AND PROCEDURES**

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175
176 **A. Meeting of Petitioning States.**

177
178 1. The Co-Chairs of the Implementing States shall schedule a meeting of
179 all states eligible to petition for membership into the Agreement on July 1, 2005.

180
181 2. A state is eligible to petition for membership into the Agreement if the
182 effective date of ~~the effective date of~~ a state's substantial compliance with the Agreement
183 is on or before July 1, 2005.

184
185 **B. Procedure for Petitioning States.** In order for a state to be considered for
186 membership at a meeting of Petitioning States on July 1, 2005, the state must file a
187 petition for membership and certificate of compliance with the Co-Chairs of the
188 Streamlined Sales Tax Implementing States on or before May 1, 2005. A copy of the
189 petitions for membership and certificate of compliance shall be sent to each of the Co-
190 Chairs of the Streamlined Sales Tax Implementing States, to the Conforming States
191 Interim Director and each of the Co-Chairs of the Conforming States Committee. The
192 petitions for membership and certificate of compliance may be filed electronically. The
193 petitions for membership and certificate of compliance shall be posted prominently on the
194 petitioning state's website. The posting on the state's website shall display the filing date
195 of the state's petition for membership.

196
197 **C. Compliance and Interpretations Committee.** The Co-Chairs of the
198 Implementing States shall appoint a Compliance and Interpretations Committee Chair
199 whose responsibility is to convene the committee and manage the process of reviewing
200 petitions for membership. Each ~~member~~ of the Conforming States ~~Committee~~ shall
201 ~~nominate~~ appoint a person to serve on the Compliance Committee by January 15, 2005.
202 The ~~nominee~~ appointed committee members must have substantial background and
203 familiarity with the provisions of the Agreement. The purpose of the Compliance and
204 Interpretations Committee shall be to review each petition for membership and certificate
205 of compliance and to review any public comments related thereto. The ~~Compliance~~
206 committee shall make a written recommendation regarding compliance of each state and
207 shall present its recommendation at the meeting of Petitioning States. All meetings of the

committee, whether in person or by telephone, shall be open to the public and advance notice of meetings shall be given.

D. Public Notice. The Executive Director shall provide a copy of each petition and each certificate of compliance to the general public as provided in Rule 806.1. The Executive Director shall also provide notice to the Chairs of the State and Local Advisory Council and the Business Taxpayer Advisory Council if such Councils have been formed by May 1, 2005.

E. Public Comment. In order to be considered at a meeting of Petitioning States on July 1, 2005, comments related to a state's petition for membership and certificate of compliance shall be in writing and shall be filed within 30 days of the filing of a state's petition for membership. The comments shall be filed with the Co-Chairs of the Streamlined Sales Tax Implementing States and with the chief executive of the petitioning state's tax agency. A copy of the comments shall be sent to each of the Streamlined Sales Tax Implementing States and to the Conforming States Interim Director and the Co-Chairs of the Conforming States Committee. The comments may be filed electronically.

F. Response to Public Comment. A state shall have 15 days from the filing date of comments to file a written response to the comments. The state's response shall be filed with the Co-Chairs of the Streamlined Sales Tax Implementing States and with the party submitting the written comment. A copy of the response shall be sent to each of the Streamlined Sales Tax Implementing States and to the Conforming States Interim Director and the Co-Chairs of the Conforming States Committee. The response may be filed electronically.

G. Petition Fee.

Each petitioning state shall submit a state's petition for membership shall be accompanied by a petition fee in the amount of \$20,000 — to the Interim Executive Director on or before July 1, 2005. This amount shall be held in escrow pending the Effective Date of the Agreement and the Effective Date of the State's membership. In the event that the Agreement fails to become effective by July 1, 2006, 2005, or the State is not found to be in compliance with the Agreement, the petition fee will be refunded to the State. If When the Agreement becomes effective and the State is found to be in compliance with the Agreement, the fee may be applied as a dollar-for-dollar credit against any future dues imposed by the Governing Board and payable by that state. If the Agreement fails to become effective by July 1, 2005, but the effective date appears to the co-chairs of the Implementing states to be within 90? days of that date, the petitioning states have the discretion to delay the refunding of dues to the states for that time period.

H. Public Hearing.

1. The Co-Chairs of the Implementing States shall schedule a public hearing as a part of the July 1, 2005 meeting of the petitioning states. Testimony may be

given in person or via telephone hookup. Following the public hearing, the vote on the each Petitioning State's membership petition shall be taken. Both the public hearing and vote on a state's petition for compliance must occur in an open meeting convened in accordance with Rule 807.1. The Co-Chairs may limit total public testimony to a reasonable time, not to be less than 15 minutes on any Petitioning State.

2. The State and Local Advisory Council and the Business Advisory Council shall have the right to present oral testimony if they choose, provided they have been formed prior to May 1, 2005 and have provided written comments. The Streamlined Sales Tax Project Co-chairs shall also have the right to present oral testimony. The ~~Executive Director~~ Co-Chairs of the Implementing States may limit the time for each Council or the Project Co-Chairs to testify to a reasonable time, not to be less than 15 minutes each.

3. Any Petitioning State has the right to make oral comments to the extent it deems appropriate, subject only to a motion by the other Petitioning States to cut off debate.

4. Any party ~~submitting written comments may include in its comments~~ may submit a written request to testify before the Petitioning States. The Co-Chairs of the Implementing States shall grant those requests ~~to the extent practicable~~ but may limit the time for any single presentation.

I. Voting. An affirmative vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.

Rule 702.2. Interim Operation of Petitioning States

A. Interim Nominating Committee. The Conforming States Committee shall serve as the Nominating Committee to present the first single slate of Officers and Directors to the Governing Board and a multiple slate for members of the Nominating Committee. Thereafter,

B. Executive Director Search. The Petitioning States shall name a four member panel to ~~interview candidates~~ conduct a search for an Executive Director, ~~consisting of three delegates named by the Petitioning States and the Interim Executive Director~~ and present qualified candidates to the Executive Committee of the Governing Board when it is formed. The Executive Committee will make the final selection.

C. Formation of the Governing Board. The Petitioning States will meet on October 1, 2005 and form the Governing Board by adopting the Bylaws developed by the Conforming States Committee. The Governing Board, after its formation, shall elect its Officers and Directors and a Nominating Committee of 8 persons at the first Annual Meeting from a multiple slate of nominees representative of the Member States as described in Article Seven of the Bylaws. When a requisite number of states have been

found to be in compliance with the Agreement, the Petitioning States shall appoint an Interim Nominating Committee of 10 members from among the representatives of approved Petitioning States, which Committee shall include regional representation. The Interim Nominating Committee shall actively seek candidates for nomination as Officers and Directors. The Interim Nominating Committee shall present a slate of Officers and Directors for consideration at the organizational meeting of the Governing Board. Candidates for Officers or Directors may also be nominated from the floor at the organizational meeting of the Governing Board.

ARTICLE VIII State Entry and Withdrawal

Rule 801. Entry Into Agreement. [Reserved.]

Rule 802. Certificate of Compliance. [Reserved.]

Rule 803. Annual Recertification of Member States. [Reserved.]

Rule 804. Requirements for Membership Approval. [Reserved.]

Rule 805. Compliance. [Reserved.]

Rule 806. Agreement Administration.

Rule 806.1 Administration of Governing Board

806.1.1 Bylaws and Articles of Incorporation

The Streamlined Sales Tax Governing Board, Inc, was incorporated on XXXdate under the laws of XXX state. The Bylaws and Articles of Incorporation are on file at the headquarters in XXXXXlocation. The corporation is recognized as 501(c) 6 Corporation under the IRS whatever the language is. The Bylaws set forth the operation and administration of the Governing Board, its committees and advisory councils in accordance with the Agreement.

806.1.2 Finance Administration Policies [reserved]

(these should include policies on establishing banking accounts, check signing, reserves, payroll, budget process, facility leasing and purchase of equipment, etc. Note that the Bylaws require an annual audit and the policy for audit procurement should also be addressed.)

806.1.3 Personnel Policies [reserved]

(these include hiring/firing, non-discrimination clauses, vacation and other types leave, benefits, etc.)

806.1.4 Communications Policies [reserved]

(most important among these is who speaks for the GB to the press/public)

806.1.5 Cost Allocation Formula for Member States [reserved]

(cost allocation is determined and approved by Gov. Bd. – should be written down here and include method for calculating. We decided on

50% population, 50% sales taxes collected I think, but it should be spelled out .)

Rule 806.2. Notice Requirements.

A. Forms of Notice.

1. Written Notice. All notices required or provided for in the Agreement shall be in writing. The writing may be incorporated in a paper document or it may be in electronic form posted on the Website or contained in electronic mail. Telephonic voice communications do not constitute written notice.

2. Paper Form. Written notice may be sent in paper form through first-class mail or any private mail delivery service accredited by the Internal Revenue Service for tax return filing purposes. Notices to the Governing Board are properly addressed to the Executive Director at the address indicated on the Website. Until an Executive Director is appointed, notice to the Board may be sent to the Interim Executive Director at the address indicated on the Website.

[For informational purposes only, the current name and address of the Interim Executive Director are as follows:]

*Scott Peterson
Interim Executive Director
SST Conforming States Committee
c/o Federation of Tax Administrators
444 North Capitol Street, N. W.
Suite 348
Washington, D. C. 20001*

This name and address may be changed from time-to-time without amending these Rules of Procedure.]

3. Electronic Form. Written notice may be sent in electronic form to parties who have supplied an e-mail address, or by sending an e-mail to the Executive Director at the e-mail address indicated on the Website. Until an Executive Director is appointed, notice to the Board may be sent to the Interim Executive Director at the e-mail address indicated on the Website.

[For informational purposes only, the current name and e-mail address of the Interim Executive Director are as follows:]

*Scott Peterson
Scott.Peterson@state.sd.us*

This name and address may be changed from time-to-time without amending these Rules of Procedure.]

4. Facsimile transmission. Written notice may be sent by facsimile transmission. Contact the Governing Board by sending a fax to the Executive Director at the fax number indicated on the Website. Until an Executive Director is appointed, notice to the Board may be sent to the Interim Executive Director at the fax number indicated on the Website.

[For informational purposes only, the current name and fax number of the Interim Executive Director are as follows:]

Scott Peterson

391 202-624-7888

392 This name and address may be changed from time-to-time without amending these Rules
393 of Procedure.]
394

395 **B. Notice to the Public.**

396 1. **Publication.** Notice to the public may be accomplished by publishing
397 the notice on the Governing Board website (the "Website") at _____,
398 under the section identified for public notice. Until the Website is established, public
399 notice may be accomplished by publishing the notice on the Streamlined Sales Tax
400 website at www.streamlinedsalestax.org. Public notices shall also be sent to registrants
401 on the electronic mailing list.

402 2. **Electronic mailing list.** Interested parties may register with the
403 Governing Board to be placed on an electronic mailing list, by sending a written
404 request. The registration will be effective as soon as practicable, but in no event later
405 than thirty days after the request is received. Any such registration will automatically
406 terminate on December 31 of the first full calendar year following the request for
407 registration and at the end of each year thereafter unless if the party requests fails to
408 respond to a request for renewal of the registration in writing.
409
410
411
412

413 **D. Notice to a Member State and to Advisory Councils.**

414 1. **Authorized Representative.** Each Member State shall designate the
415 name, mailing address and electronic mail address of the person(s) authorized to receive
416 written notice for that State on matters governed by the Agreement, referred to herein as
417 the "authorized representative." That name and address shall be published on the
418 Governing Board Website.

419 2. **Governing Board Members.** Each Member State shall designate the
420 name, mailing address and electronic mail address of the four people authorized to
421 represent the Member State on the Governing Board. That name and address shall be
422 published on the Governing Board Website. Member States are responsible for updating
423 their membership designations.

424 3. **Advisory Councils.** Each Member State shall designate the name,
425 mailing address and electronic mail address of the person authorized to represent the
426 Member State on the State and Local Advisory Council. That name and address shall be
427 published on the Governing Board Website. Member States are responsible for updating
428 their membership designations. The Business and Taxpayer Advisory Council shall
429 submit its membership lists for purposes of giving notice of meetings and shall be
430 responsible for updating the lists.
431
432

433 **E. Written notice to a taxpayer, representative, or other non-governmental**
434 **entity.**

435 1. **Designation of address.** A taxpayer, representative, or other
436 nongovernmental party that initiates a proceeding before the Governing Board

(collectively referred to as an "interested party") may designate in the document initiating the proceedings or communication whether it wishes to receive notices or other communications in paper format, ~~or by electronic mail, or by facsimile transmission.~~

~~2. Written Notice. Written notice may be accomplished by paper form as set forth in part CD.3 of this Rule, or by electronic form as set forth in part CD.4 of this Rule, or by facsimile transmission as set forth in part D.5 of this rule.~~

~~3. Paper form. Written notice may be sent to the interested party in paper form through first class mail or any private mail delivery service accredited by the Internal Revenue Service for tax return filing purposes, properly addressed to the mailing address provided by the interested party.~~

~~4. Electronic form. Written notice may be sent to the interested party in electronic form by sending an e-mail properly addressed to the e-mail address provided by the interested party.~~

~~5. Facsimile transmission. Written notice may be sent by facsimile transmission by sending a fax to the interested party at a fax number indicated by the interested party.~~

52. Default rule. If the interested party does not designate the manner of notice or a designated address, the Governing Board shall use the same form of written notice used by the party in initiating the proceeding and shall use the address or fax number used by the party in initiating its notice. If no address or fax number is included or can be determined from the party's initial communication, the Governing Board shall have no obligation to provide a written response.

Rule 807. Meetings.

Rule 807.1. Open Meetings.

- A. ~~Definitions~~
- B. ~~Required open and public meetings~~
- C. ~~Recording proceedings~~
- D. ~~Agenda and other "writing" as public record; Inspection~~
- E. ~~Conditions for taking action on items not appearing on posted agenda~~
- F. ~~Minutes of closed session~~
- G. ~~Statement of reasons and authority for closed session~~
- H. ~~Governing Board bodies subject to rule~~
- I. ~~When closed sessions held~~
- J. ~~Continuance or recontinuance of hearing~~
- K. ~~Fees~~
- L. ~~Complaints regarding public participation rule~~
- M. ~~Prohibition against use of certain facilities~~
- N. ~~Prohibition against closed sessions except as expressly authorized~~

483 807.1.AA. Definitions "Streamlined Sales Tax Governing Board, Inc.;"
484 "Governing Board;" "Governing Board member;" "Governing Board body" and
485 "Member State."

486 [Note to Loren: because the Member States only have 1 vote each on the GB, but 4
487 representatives, and some of these folks are on committees, the open meetings
488 requirements which we ordinarily apply to elected officials don't seem so relevant
489 regarding groups of people convening outside a regular meeting. That's why I shortened
490 a lot of this.]

491
492 i1. Action taken. As used in this rule, "action taken" means a
493 collective decision made by the members of the Governing Board or of a
494 Governing Board body committee, a collective commitment or promise by the
495 members of the Governing Board or of a Governing Board body to make a
496 positive or negative decision or an actual vote by the members of the Governing
497 Board or of a Governing Board body committee when sitting as a body or entity
498 upon a motion, proposal, resolution, order or similar action.

499 As used in this rule, "Streamlined Sales Tax Governing Board,
500 Inc." or "Governing Board" means the Governing Board established by Section 806 of
501 the Streamlined Sales and Use Tax Agreement.

502
503 2. As used in this rule, "Governing Board member" means a
504 member of the Governing Board as described in Section 806 of the Streamlined Sales and
505 Use Tax Agreement.

506
507 ii3. Governing Board body. As used in this rule, "Governing Board
508 body" means: [I struck most of this because it is way too broad.]

509
510 a. Every committee, advisory committee, subcommittee or
511 similar multimember body of the Governing Board which is required by
512 the Streamlined Sales and Use Tax Agreement or the By-Laws of the
513 Governing Board to conduct official meetings and every committee
514 created by the Governing Board or its Executive Committee.

515
516 4. As used in this rule, "Governing Board body" also means
517 any board, Governing Board, committee, or similar multimember body
518 which exercises any authority of the Governing Board delegated to it by
519 the Governing Board;

520
521 b. Any board, Governing Board, committee, or similar
522 multimember body which exercises any authority of the Governing Board
523 delegated to it by the Governing Board

524 c. A

525 5. As used in this rule, "Governing Board body" also means
526 any advisory board, advisory Governing Board, advisory committee,
527 advisory subcommittee, or similar multimember advisory body of the
528 Governing Board, if created by formal action of the Governing Board or

of any member of the Governing Board when acting in their official capacity as a member of the Governing Board, and if the advisory body so created consists of three or more persons;

d. Notwithstanding the foregoing subsections, Governing Board body does not include the State and Local Advisory Council or the Business and Taxpayer Advisory Council.

iii. — Governing Board member. As used in this rule, "Governing Board member" means a member of the Governing Board as described in Section 806 of the Streamlined Sales and Use Tax Agreement. [is all this definition necessary? Do you want to reference the bylaws?]

iiiv. Meeting. As used in this rule, "meeting" includes any congregation, whether in person or by electronic means, of a majority of the members of the Governing Board or Governing Board body committee at the same time to hear, discuss, deliberate or act upon any item that is within their subject matter jurisdiction except the following do not constitute a meeting:

a. social or ceremonial occasions whether sponsored in whole or in part by the Governing Board or a Governing Board related body;

b. at a conference or similar gathering sponsored by an entity other than the Governing Board or a Governing Board body committee that involves discussion of issues of general interest provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business that is within the jurisdiction of the Governing Board or the Governing Board body; [suggestion that this be clarified] or [this is pretty unrealistic!]

c. training or informational sessions sponsored by the Governing Board or a Governing Board committeebody at which there are no actions or deliberative discussions undertaken.

v6. — Member State. As used in this rule, "Member State" means a party State of the Streamlined Sales and Use Tax Agreement. "State" means the same as Section 213 of the Streamlined Sales and Use Tax Agreement.

vi. — Streamlined Sales Tax Governing Board, Inc. As used in this rule, "Streamlined Sales Tax Governing Board, Inc." or "Governing Board" means the Governing Board established by Section 806 of the Streamlined Sales and Use Tax Agreement.

B. 807.1.B "Action taken." As used in this rule, "action taken" means a collective decision made by the members of the Governing Board or of a Governing Board body, a collective commitment or promise by the members of the Governing Board or of a Governing Board body to make a positive or negative decision or an actual vote by the members of the Governing Board or of a Governing Board body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

575
576 **C. Required open and public meetings.**
577

578 i1. Pursuant to Section 807 of the Streamlined Sales and Use Tax
579 Agreement and Articles Six and Seven of the Bylaws, all meetings of the Governing
580 Board or a Governing Board ~~body~~ committee shall be open and public and all persons
581 shall be permitted to attend any meeting of the Governing Board or a Governing Board
582 ~~body~~ committee except as otherwise provided in this rule.
583

584 ii2. Nothing in this rule shall be construed to prohibit the Governing
585 Board or a Governing Board ~~body~~ committee from holding an open or closed meeting by
586 teleconference ~~if the convening at one location of a quorum of the Governing Board or~~
587 ~~the Governing Board body is difficult or impossible~~, subject to all of the following:
588

589 a. The teleconferencing meeting shall comply with all requirements of
590 this rule applicable to other meetings.
591

592 b. The portion of the teleconferenced meeting that is required to be open
593 to the public shall be audible to the public at the location specified in the
594 notice of the meeting.
595

596 c. Each teleconference location shall be identified in the notice of the
597 meeting and shall be accessible to the public.
598

599 d. All votes taken during a teleconferenced meeting shall be by roll call.
600

601 e. At least one member of the Governing Board or Governing Board ~~body~~
602 committee or of an employee of the Governing Board or a Mmember State
603 shall be physically present at the location specified in the notice of the
604 meeting.
605

606 iii3. For the purposes of this section, "teleconference" means a
607 conference of individuals in different locations, connected by electronic means, through
608 either audio or video, or both.
609

610 **D. Meeting definition.** For the purposes of this rule, "meeting" includes any
611 congregation, ~~whether in person or by electronic means, of a majority of the members of~~
612 ~~the Governing Board or Governing Board body at the same time to hear, discuss,~~
613 ~~deliberate or act upon any item that is within their subject matter jurisdiction except:~~
614

615 ~~1. social or ceremonial occasions whether sponsored in whole or in part~~
616 ~~by the Governing Board or a Governing Board body;~~
617

618 ~~2. at a conference or similar gathering sponsored by an entity other than~~
619 ~~the Governing Board or a Governing Board body that involves discussion of issues of~~
620 ~~general interest provided that a majority of the members do not discuss among~~

621 themselves, other than as part of the scheduled program, business that is within the
622 jurisdiction of the Governing Board or the Governing Board body; [suggestion that this
623 be clarified] or

624
625 3. ~~training or informational sessions sponsored by the Governing Board or~~
626 ~~a Governing Board body at which there are no actions or deliberative discussions~~
627 ~~undertaken.~~

628
629 **807.1.CE. Recording proceedings.** Any person attending an open and public
630 meeting of the Governing Board or a Governing Board ~~body~~ committee may record the
631 proceedings on a tape recorder in the absence of a reasonable finding of the Governing
632 Board or the Governing Board ~~body~~ committee that such recording constitutes, or would
633 constitute, a disruption of the proceedings.

634
635 **807.1.DF. Agenda and other "writing" as public record; Inspection.**

636
637 i1. Agendas of public meetings and other writings, when distributed to all,
638 or a majority of all, of the members of the Governing Board or a Governing Board ~~body~~
639 committee by a member, officer, employee, or agent of the Governing Board for
640 discussion or consideration at a public meeting of the Governing Board or the Governing
641 Board ~~body~~ committee, are public records as soon as distributed, and shall be made
642 available. However, this section shall not include any writing which is

643
644 a. a preliminary draft, note or memoranda which are not retained
645 by the Governing Board or the Governing Board committee in the
646 ordinary course of business, provided that the public interest in
647 withholding those records clearly outweighs the public interest in
648 disclosure;

649
650 b. records pertaining to pending litigation to which the Governing
651 Board, Governing Board committee or Member State is a party
652 until the pending litigation has been finally adjudicated or
653 otherwise settled;

654
655 c. minutes made pursuant to Rule 807.1.F regarding closed
656 meetings; and

657
658 d. personnel, medical or similar files the disclosure of which
659 would constitute an unwarranted invasion of personal privacy.

660
661 ii2. Writings which are public records under subdivision (a) and which
662 are distributed prior to commencement of a public meeting shall be made available for
663 public inspection upon written request prior to commencement of such meeting.

664
665 iii3. Writings which are public records under subdivision (a) and which
666 are distributed during a public meeting, either prior to commencement of their discussion

667 or during their discussion at such meeting shall be made available for public inspection
668 prior to commencement of, and immediately during their discussion at such meeting.
669

670 ~~iv4. Writings which are public records under subdivision (a) and which~~
671 ~~are distributed during their discussion at a public meeting shall be made available for~~
672 ~~public inspection immediately or as soon thereafter as is practicable.~~
673

674 ~~v5. Nothing in this section shall be construed to prevent the Governing~~
675 ~~Board from charging a fee or deposit for a copy of a public record to cover the direct~~
676 ~~costs of duplication. This section shall not be construed to be applicable to any writings~~
677 ~~solely because they are properly discussed in a closed session of the Governing Board or~~
678 ~~a Governing Board committee body. Nothing in this rule shall be construed to require the~~
679 ~~Governing Board to place any paid advertisement or any other paid notice in any~~
680 ~~publication.~~
681

682 ~~vi6. "Writing" for purposes of this section means handwriting,~~
683 ~~typewriting, printing, photostatting, photographing, and every other means of recording~~
684 ~~upon any form or communication or representation, including letters, words, pictures,~~
685 ~~sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper~~
686 ~~tapes, photographic films and prints, magnetic or punched cards, discs, drums and other~~
687 ~~documents.~~
688

689
690 ~~{Create general section on reporting from closed meetings.}~~
691
692

693 ~~807.1.EG. Conditions for taking action on items not appearing on posted~~
694 ~~agenda. [this seems out of place here — it belongs in a section on setting the agenda for~~
695 ~~GB — I also think you don't want this much restriction on a committee agenda!]~~
696

697 ~~i1. The Governing Board or a Governing Board body committee may~~
698 ~~take action on items of business not appearing on the posted agenda under any of the~~
699 ~~conditions stated below:~~
700

700 ~~{Loren, review sec. 6, Art. 4 of the bylaws}~~

701 ~~a. Upon a determination by a majority of those present and voting~~
702 ~~of the Governing Board or a Governing Board body committee that an emergency~~
703 ~~situation exists, as defined in Section 806 and Rule 807.3 of the Streamlined Sales and~~
704 ~~Use Tax Agreement. or~~
705

706 ~~b. Upon a determination by a two-thirds vote of the Governing~~
707 ~~Board or a Governing Board body, or, if less than two-thirds of the members are present,~~
708 ~~a unanimous vote of those members present, that there exists a need to take immediate~~
709 ~~action and that the need for action came to the attention of the Governing Board or the~~
710 ~~Governing Board body subsequent to the agenda being posted. [this appears to be~~
711 ~~inconsistent with out quorum requirements — we require 2/3 to be present for a quorum in~~
712 ~~GB, then a majority of those present and voting can pass something. It doesn't matter~~

713 why it's not on the agenda—the question is whether you want a supermajority to approve
714 its addition.]

715
716 ~~ii2. Notice of the additional item to be considered shall be provided to~~
717 ~~each member of the Governing Board or the Governing Board body and to the public as~~
718 ~~provided in Rule 806.1. all parties that have requested notice of its meetings as soon as is~~
719 ~~practicable after a determination of the need to consider the item is made, but shall be~~
720 ~~delivered in a manner that allows it to be received by the members at least 48 hours~~
721 ~~before the time of the meeting specified in the notice. Notice shall be made available to~~
722 ~~national publications which specifically address tax matters. Notice shall be provided to~~
723 ~~the general public by placing it on appropriate electronic bulletin boards or other~~
724 ~~appropriate mechanisms, whenever the Governing Board has the electronic capability~~
725 ~~necessary to do so.~~

726
727
728 ~~[The agreement should be amended to allow for a closed session when~~
729 ~~the Governing Board is a party to litigation.] Don't you think an~~
730 ~~"interpretation" of 807E could cover this? If not, then I agree it should be added~~
731 ~~to that list.~~

732
733 **807.1.FH. Minutes of closed session.** The Governing Board or a Governing
734 Board ~~body~~ committee shall keep minutes of the topics discussed ~~and decisions made at~~
735 a closed session and the reason for such a session. The minutes made pursuant to this
736 section ~~is~~ are not a public record and shall be kept confidential. ~~The minutes shall be~~
737 ~~available to members of the Governing Board or the Governing Board body.~~ Such
738 minutes may, but need not, consist of a recording of the closed session.

739
740 **807.1.GI. Statement of reasons and authority for closed session.**

741
742 ~~i1.~~ Prior to holding any closed session, the Governing Board or a
743 Governing Board ~~body~~ committee shall state the general reason or reasons for the closed
744 session, and cite the specific authority, including the particular subdivision of Section 807
745 of the Streamlined Sales and Use Tax Agreement under which the session is being held.
746 If the session is closed pursuant to subdivision E of Section 807 the Governing Board or
747 the Governing Board ~~body~~committee shall state the title of, or otherwise specifically
748 identify, the litigation to be discussed unless the Governing Board or the Governing
749 Board ~~body~~ committee states that to do so would jeopardize the Governing Board's or a
750 member State's ability to effectuate service of process upon one or more unserved
751 parties, or that to do so would jeopardize its ability to conclude existing settlement
752 negotiations to its advantage.

753
754 ~~ii2.~~ In the closed session, the Governing Board or the Governing Board
755 ~~body~~ committee may consider only those matters covered in its statement.

756
757 ~~iii3.~~ The statement shall be made as part of the notice provided for the
758 meeting.

759
760 | iv4. If, after the closed session agenda has been published in compliance
761 | with this section, any additional pending litigation (under paragraph E of Section 807)
762 | matters arise, the postponement of which will prevent the Governing Board or the
763 | Governing Board ~~body~~ committee from complying with any statutory, court-ordered, or
764 | other legally imposed deadline, the Governing Board or Governing Board ~~body~~
765 | committee may proceed to discuss those matters in closed session and shall publicly
766 | announce in the meeting the title of, or otherwise specifically identify, the litigation to be
767 | discussed. Such an announcement shall be deemed to comply fully with the requirements
768 | of this section.

769
770 | v5. Nothing in this section shall require or authorize the giving of names
771 | or other information which would constitute an invasion of privacy or otherwise
772 | unnecessarily divulge the particular facts concerning the closed session.

773
774 | **807.1.HJ. Governing Board bodies subject to rule.** Each provision of this rule
775 | shall apply to every Governing Board ~~body~~ unless the body is specifically excepted from
776 | this rule. ~~[Need to consider application of this provision to Advisory Councils.]~~
777 | [Bylaws make it applicable to all committees – not needed here.]

778
779 | **807.1.IK. When closed sessions held.** Each closed session of the Governing
780 | Board or a Governing Board ~~body~~ shall be held only during a regular or special meeting
781 | of the Governing Board or a Governing Board ~~body~~. [Unnecessarily restrictive—what
782 | about an emergency meeting?—not needed]

783
784 | **807.1.JL. Continuance or recontinuance of hearing.** Any hearing being held,
785 | or noticed or ordered to be held by the Governing Board or a Governing Board ~~body~~
786 | committee at any meeting may by order or notice of continuance be continued or
787 | recontinued to any subsequent meeting of the Governing Board or the Governing Board
788 | ~~body~~committee which is noticed pursuant to Section 8. A copy of the order or notice of
789 | continuance shall be conspicuously posted on or near the door of the place where the
790 | hearing was held within 24 hours after the time of the continuance; provided, that if the
791 | hearing is continued to a time less than 24 hours after the time specified in the order or
792 | notice of hearing, a copy of the order or notice of continuance of hearing shall be posted
793 | immediately following the meeting at which the order or declaration of continuance was
794 | adopted or made. If a hearing is held in a hotel or other facility not under the control of
795 | the Governing Board or a member State, the posting requirement is waived, and the
796 | Governing Board or the Governing Board ~~body~~committee shall accomplish the purpose
797 | of this section through a reasonable alternative means.

798
799 | **807.1.KM. Fees.** No fees may be charged by the Governing Board for providing
800 | a notice required by Section 8 or for carrying out any provision of this rule, except as
801 | specifically authorized pursuant to this rule.

802
803 | **807.1.L.N. Complaints regarding public participation rule.** Complaints
804 | involving alleged failures of the Governing Board or a Governing Board ~~body~~ committee

to adhere to the policies expressed herein shall be directed to the Executive Director of the Governing Board. Upon receipt of any complaint, the Executive Director shall immediately forward a copy of the complaint to each member of the Governing Board. Thereafter, the Executive Director shall conduct or have conducted an investigation of the complaint and prepare a report of findings and recommendations for any remedial steps which may be necessary to implement the letter and spirit of this rule. A copy of this report shall be forwarded to each member of the Governing Board within 45 days of receipt of the complaint and the matter shall be scheduled for discussion and possible action at the next meeting of the Governing Board or the Executive Committee, whichever occurs first.

807.1.MQ. Prohibition against use of certain facilities. The Governing Board or a Governing Board ~~body-~~ committee shall not conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, sexual orientation or sex.

807.1.NP. Prohibition against closed sessions except as expressly authorized. Except as expressly authorized by the Agreement or this rule, no closed session may be held by the Governing Board or a Governing Board ~~body-~~ committee.

Rule 807.2. Regular Meetings. [Reserved.]

A. Governing Board. ~~Note: bylaw provisions on annual meeting: An annual meeting of the members of Governing Board shall be held once each year in a Member State for the purpose of electing Officers and Executive Committee Directors, for approving an annual budget, and for the transaction of such other business as may come before the meeting.~~

i. The Executive Committee of the Governing Board shall determine the time and place ~~as determined by the Executive Committee. Notice provisions in Section 5 of this Article apply~~ for the annual meeting and shall prepare an agenda for distribution to the Member States. Written notice of the meeting must be given at least 30 days in advance of the meeting and must include the agenda, budget, information about the proposed slate of officers and a description of other items on the agenda. Supplementary materials must be distributed in writing no later than 10 days prior to the meeting.

ii. Member States wishing to add action or discussion items to the agenda may do so, if circulated in writing in advance to the membership of the Governing Board not less than 10 days prior to the meeting and with the approval of a majority of those present and voting at the meeting. A motion to add the item to the agenda must be considered.

850 iii. Proposed amendments to the Agreement must conform to Rule 901.
851 Requests for interpretation or definition must conform to Rules 902 and 903.
852

853 ~~The place for annual meetings should be rotated among the Member States on a~~
854 ~~voluntary basis.~~
855

856 B. Executive Committee. The Executive Committee shall meet no less than once
857 each calendar quarter or it may meet more frequently. The President shall post a
858 schedule for regular meetings on the website scheduling as far in advance as
859 possible; however, in not case shall notice of less than 30 days be given.
860

861 C. Other Committees. Standing Committees shall post their meeting schedule on
862 the website. Ten day advance written notice is sufficient, although regular
863 meetings should be scheduled as far in advance as possible.
864

865 **Rule 807.3 Special Meetings. ~~Reserved.~~**

866 A. Governing Board. ~~Note: bylaw provisions on special meetings. Special~~
867 ~~meetings of the Governing Board may be called by the Officers, the Executive~~
868 ~~Committee, or by petition of forty percent of Member States. Such meetings shall be held~~
869 ~~in a Member State at such time and place as determined by the Executive Committee.~~
870 ~~Notice provisions in Section 5 of this Article apply.~~

871 i. The Executive Committee of the Governing Board shall determine the time
872 and place as determined by the Executive Committee. Notice provisions in Section 5
873 of this Article apply for special meetings. The Executive Committee shall prepare
874 an agenda for distribution to the Member States except when called by a petition of
875 Member States. Written notice of the meeting must be given at least 30 days in
876 advance of the meeting and must include the agenda, purpose of the meeting and all
877 pertinent materials for discussion. Member States wishing to add action or
878 discussion items to the agenda may do so, if circulated in writing in advance to the
879 membership of the Governing Board not less than 10 days prior to the meeting and
880 with the approval of a majority of those present and voting at the meeting.

881 ii. For meetings called by petition of Member States, the petition must contain the
882 purpose of the meeting and the agenda, and no other business may be discussed.
883

884 iii. Proposed amendments to the Agreement must conform to Rule 901. Requests
885 for interpretation or definition must conform to Rules 902 and 903.
886

887 B. Executive Committee. The President may call special meetings of the
888 Executive Committee by giving 10 days written notice of the place, time and
889 agenda for such a meeting.
890

891 **Rule 807.43. Emergency Meetings.**

892
893 A. -Executive Committee. An emergency meeting of the Executive
894 Committee may be called on as little as 24 hours written notice if the Executive Director

895 and the President of the Governing Board determines that an emergency action is
896 necessary to--

- 897 1. Prevent imminent damage to the public welfare,
- 898
- 899 2. Ensure the proper functioning of the Agreement or the Governing Board,
- 900 or
- 901 3. Prevent the Governing Board or any Member State acting pursuant to the
- 902 provisions of the Agreement or direction of the Governing Board from
- 903 violating any federal or state law.
- 904

905 i. The Governing Board must be notified of the nature of the emergency, the
906 proposed action and the time and place of the meeting. Member States wishing to
907 participate and vote in the meeting of the Executive Committee may do so, either
908 in person or electronically.

909
910 B. Governing Board. Emergency meetings of the Governing Board may be
911 called by the President, the Executive Committee or by petition of forty percent of
912 Member States at a time and place determined by those who called the meeting. The
913 purpose of the meeting and the agenda must be contained in the written notice and not
914 other business may be transacted. The 30 day notice may be waived, but in no case shall
915 less than 10 days notice be given. Electronic participation will be allowed.

916
917
918 **Rule 807.5 Electronic participation.** In so far as possible, each meeting of a
919 committee, the Executive Committee or the Governing Board shall provide an
920 opportunity for Member States to participate by telephone. Telephone participation by a
921 Member State may be counted for purposes of a quorum or voting.

922
923 **Rule 807.6 Conditions for taking action on items not appearing on posted agenda.**
924 **The Governing Board or a Governing Board body committee may take action on items**
925 **of business not appearing on the posted agenda upon a determination by a majority of**
926 **those present and voting of the Governing Board or a Governing Board body committee**
927 **that there exists a need to take immediate action and that the need for action came to the**
928 **attention of the Governing Board or the Governing Board committee subsequent to the**
929 **agenda being posted or that an emergency situation exists.**

930
931
932 **Rule 808. Withdrawal of Membership or Expulsion of a Member.**

933
934 Rule 808.1. Withdrawal of Membership. [Reserved.]

935
936 Rule 808.2. Expulsion of a Member. [Reserved.]

937
938
939
940 **Rule 809. Sanction of Member States. [Reserved.]**

941
942
943 **Section 810. State and Local Advisory Council. [Reserved.]**
944
945

946 **Section 811. Business Taxpayer Advisory Council. [Reserved.]**
947
948

949 **ARTICLE IX**
950 **Amendments and Interpretations.**
951

952 **Rule 901. Amendments to Agreement.**
953

954 **A. Requests of Amendments to the Agreement.** Any member state may
955 propose an amendment to the Agreement by submitting the proposed amendment, in
956 writing and in electronic form, to the Executive Director. The proposed amendment will
957 be considered at the next annual meeting occurring at least 75 days after the request is
958 received by the Executive Director unless the requesting state asks, in writing, for
959 consideration of the amendment at a special meeting.
960

961 **B. Notice of Request.** The Executive Director shall provide notice of the
962 proposed amendment and the date of the meeting at which the proposed amendment will
963 be considered to the following parties:
964

965 1. The Governor and the presiding officer of each house of each member
966 state;
967

968 2. The authorized representative of each member state;
969

970 3. The Chair of the State and Local Advisory Council;
971

972 4. The Chair of the Business Taxpayer Advisory Council;
973

974 5. The Chair of the Compliance and Interpretations Committee;
975

976 6.5. The general public as provided in Rule 806.1.
977

978 **C. Public Comment.**
979

980 1. Any party may comment on the proposed amendment by sending
981 written the comments, ~~in writing~~, to the Executive Director with a copy to the authorized
982 representative of the requesting state. Any such comments must be submitted at least 30
983 days prior to the date of the meeting at which the proposed amendment will be
984 considered.
985

986 2. The requesting state has the option of responding to any written
987 comments by submitting the response to the Executive Director in electronic form, at
988 least 10 days prior to the hearing date, with a copy, either in electronic form or in paper
989 form, to the party originating the comments.
990

991 3. The Executive Director shall post all written comments received in
992 electronic form to the Governing Board website. The Executive Director may also post
993 comments not received in electronic form to the extent resources are available.
994

995 4. Any party submitting written comments may include in its comments a
996 request to testify before the Governing Board. The Executive Director shall grant those
997 requests to the extent practicable but may limit the time for any single presentation. The
998 Executive Director may limit total public testimony to a reasonable time, not to be less
999 than one hour.
1000

1001 **D. Public Meeting.**

1002

1003 1. The vote on the proposed amendment shall be held at an open meeting
1004 convened in accordance with Rule _____.
1005

1006 2. The State and Local Advisory Council and the Business Advisory
1007 Council shall have the right to present oral testimony if they choose. The Executive
1008 Director may limit the time for each Council to testify to a reasonable time, not to be less
1009 than 15 minutes each.
1010

1011 3. Any member state has the right to make oral comments to the extent it
1012 deems appropriate, subject only to a motion by the Governing Board to cut off debate.
1013 Any member state has the right to propose revisions to the proposed amendments to the
1014 extent those revisions are germane.
1015

1016 4. After discussion and receipt of testimony, the Governing Board shall
1017 vote on any revisions to the proposed amendment. Approval of the proposed revisions
1018 shall be by a simple majority vote of those member states present
1019

1020 5. After discussion and receipt of testimony, the Governing Board shall
1021 vote on adoption of the proposed amendment, whether or not revised. The proposed
1022 amendment will be adopted only if approved by a three-fourths vote of the entire
1023 Governing Board.
1024

1025 **Rule 902. Interpretations of Agreement.**

1026

1027 **A. Requests for Interpretation of the Agreement.** Any member state or person
1028 may request an interpretation of the Agreement by submitting the request, in writing, to
1029 the Executive Director.
1030
1031

1032
1033 **B. Compliance and Interpretations Committee.**
1034

1035 1. The Executive Director shall forward the request to the Compliance
1036 and Interpretations Committee for an initial evaluation. The Compliance and
1037 Interpretations Committee shall review the request to determine if further action is
1038 warranted.
1039

1040 2. If the Compliance and Interpretations Committee determines that the
1041 request is inappropriate, unwarranted or unnecessary for any reason, it shall notify the
1042 Executive Director who shall notify the requestor that the Governing Board declines to
1043 act on the request. This action shall be reported to the Executive Committee and the
1044 Governing Board. If the requestor disagrees with the initial evaluation, the requestor may
1045 invoke the dispute resolution process provided for in Article X.
1046

1047 3. If the Compliance and Interpretations Committee determines that the
1048 request should be granted and an interpretation should be issued, the Committee shall
1049 inform the Executive Director who shall publish the request for interpretation on the
1050 website and solicit comment. The Compliance and Interpretations Committee shall
1051 consult with the State and Local Advisory Council and the Business and Taxpayer
1052 Advisory Council and shall formulate a recommendation to the Governing Board.
1053

1054 **C. Public Notice.** The Executive Director shall provide a copy of the request
1055 for interpretation to and shall solicit comment from the following parties:
1056

- 1057 1. The authorized representative of each member state;
1058
1059 2. The Chair of the State and Local Advisory Council;
1060
1061 3. The Chair of the Business Taxpayer Advisory Council;
1062
1063 4. The general public as provided in Rule 806.1.
1064

1065 **D. Public Meeting.** No sooner than 60 days after solicitation of comment, the
1066 Compliance and Interpretations Committee shall meet in a public meeting convened in
1067 accordance with Rule _____ to consider the request and shall issue a written
1068 recommendation decision. The recommendation decision may be in the form of (1) an
1069 interpretation of the agreement or (2) a determination that an interpretation should not be
1070 issued, not to issue an interpretation. The recommendation decision shall be in writing
1071 and shall provide the Committee's rationale for its recommended action. ~~the decision.~~ A
1072 copy of the recommendation decision shall be sent to the requesting party, the Executive
1073 Committee and the Governing Board.
1074

1075 **E.** Actions recommended by the Compliance and Interpretations Committee
1076 shall be placed on the agenda of the Governing Board for either regular or special
1077 meetings.

1078
1079 **FE. Appeal.** If the requestor disagrees with the decision, the requestor may
1080 invoke the ~~dispute resolution~~appeals process provided for in Article X.
1081

1082 **GF. Publication of Decision.** Once the decision of the Governing Board
1083 becomes final, either because no appeal is filed or because the appeal procedures have
1084 been exhausted, the decision shall be sent to the requesting party and a copy of the
1085 decision shall be posted on the Website.
1086

1087 **H.G. Expedited Process.** The time limitations in this rule may be shortened if
1088 the requestor asks for expedited consideration in its request. In that case, the notice to
1089 interested parties shall request written comment within 10 days. The Compliance and
1090 Interpretations Committee may meet any time after that 10-day period has expired.
1091

1092
1093 **Rule 903. Definition Requests.**
1094

1095 **Rule 903.1. Additional Definitions.**
1096

1097 **A. Requests for Additional Definitions.** Any member state or person may
1098 request an additional definition in the Agreement by submitting the proposed definition,
1099 in writing, to the Executive Director.
1100

1101 **B. Compliance and Interpretations Committee.**
1102

1103 1. The Executive Director shall circulate the proposed definition to the
1104 Compliance and Interpretations Committee for an initial evaluation. The Compliance
1105 and -Interpretations Committee shall review the proposed definition to determine if
1106 further action is warranted.
1107

1108 2. If the Compliance and Interpretations Committee determines that the
1109 definition is inappropriate, unwarranted or unnecessary for any reason, it shall notify the
1110 Executive Director who shall notify the requestor that the Governing Board declines to
1111 adopt the proposed definition. This action shall be reported to the Executive Committee
1112 and the Governing Board. If the requestor disagrees with the initial evaluation, the
1113 requestor may invoke the dispute resolution process provided for in Article X.
1114

1115 3. If the Compliance and Interpretations Committee determines that
1116 additional consideration of the proposed definition is warranted, the Committee shall
1117 inform the Executive Director who shall publish the request for definition on the Website
1118 and solicit comment. The Compliance and Interpretations Committee shall consult with
1119 the State and Local Advisory Council and the Business and Taxpayer Advisory Council
1120 and shall formulate a recommendation to the Governing Board.
1121

1122 **C. Public Notice.** If ~~the~~ the Compliance and Interpretations Committee has
1123 notified the Executive Director that additional consideration of the proposed definition is

warranted, the Executive Director shall provide a copy of the request for definition to and shall solicit comment from the following parties:

1. The authorized representative of each member state;
2. The Chair of the State and Local Advisory Council;
3. The Chair of the Business Taxpayer Advisory Council;
4. The general public as provided in Rule 806.1.

D. Public Meeting. No sooner than 60 days after solicitation of comment, the Compliance and Interpretations Committee shall meet in a public meeting convened in accordance with Rule _____ to consider the request and shall issue a written recommendation. The decision may be in the form of (1) a recommendation of a proposed definition or (2) a determination not to propose a new definition. The recommendation shall be in writing and shall provide the Committee's rationale for the decision. A copy of the decision shall be sent to the requesting party, the Executive Committee and the Governing Board.

E. Actions on definitions recommended by the Compliance and Interpretations Committee shall be placed on the agenda of the Governing Board for either regular or special meetings.

FE. Appeal. If the decision is not to propose a new definition and the requestor disagrees with the decision, the requestor may invoke the dispute resolution appeals process provided for in Article X.

GF. Publication of Decision. Once the decision becomes final, either because no appeal is filed or because the appeal procedures have been exhausted, the decision shall be sent to the requesting party and a copy of the decision shall be posted on the Website.

HG. Proposal of Amendment. If the Compliance and Interpretations Committee proposes a new definition, it shall propose an Amendment to the Agreement and the provisions of Section 901 shall be followed.

Rule 903.2. Requests for Interpretation of a Definition.

A request for interpretation of a definition shall be considered in the same manner as a request for interpretation of the Agreement and the provisions of Rule 902 shall apply.

ARTICLE X Issue Resolution Process.

1170 | **Rule 1001. Rules and Procedures for Dispute Resolution Appeals.**

1171 |
1172 | ~~A. Issue Resolution Committee. The Executive Director shall appoint an Issue~~
1173 | ~~Resolution Committee consisting of no fewer than three representatives, each from a~~
1174 | ~~different member state, whose responsibilities shall be those attributed to the issue~~
1175 | ~~resolution process indicated in Articles IX and X of the Agreement and the corresponding~~
1176 | ~~rules promulgated thereunder.~~

1177 |
1178 | **AB. Petition for Reconsideration.** Any party dissatisfied with a decision of the
1179 | Governing Board may file an appeal with the Governing Board to request reconsideration
1180 | of the decision.

1181 |
1182 | 1. Contents of the petition. A petition shall set forth in reasonable detail
1183 | the basis for the request being made, containing all facts, evidence and legal discussion
1184 | necessary to allow for a disposition of the matter; a statement as to whether the petition
1185 | relates to any matter pending in any state or local administrative or judicial process; a
1186 | statement as to whether a hearing is requested; and an affidavit or affirmation that the
1187 | facts contained therein are true and correct.

1188 |
1189 | 2. **Timing of the petition.** Unless otherwise stated in these rules, a
1190 | petition for reconsideration shall be filed within sixty (60) days after the decision is
1191 | issued.

1192 |
1193 | 3. **Fee.** There shall be no fee or charge for the initial filing of any
1194 | petition, although the Governing Board retains the discretion to allocate the costs
1195 | incurred by the GB and the IRC in determining the petition to the petitioner in whole or
1196 | in part, and/or to other persons who have participated in the issue resolution process.

1197 |
1198 | **BC. Publication of the Petition.** On receipt of the petition, the Executive
1199 | Director shall publish the petition on the website, and provide a copy of the
1200 | petition request for interpretation to and solicit comment from the following parties:

- 1201 |
1202 | 1. ~~the designated delegate~~ authorized representative of each member state;
1203 |
1204 | 2. ~~the designated representative~~ chair of the State and Local Advisory
1205 | Council;
1206 |
1207 | 3. ~~the designated representative~~ chair of the Business Taxpayer Advisory
1208 | Council;
1209 |
1210 | 4. the chair of the Issues Resolution Committee; and
1211 |
1212 | 5. the general public as provided in Rule 806.1

1213 |
1214 | **CD. No Hearing Requested.** If the petitioner has not requested a hearing, the
1215 | Issue Resolution Committee shall meet to consider the petition and any comment

received, and shall issue a recommendation to the Governing Board, no sooner than 60 days, and no later than 120 days, after solicitation of comment. The recommendation shall be in writing and shall provide the Issue Resolution Committee's rationale for the recommendation.

E. Hearing Requested. If the petitioner has requested a hearing, the Issue Resolution Committee shall, no sooner than 60 days, and no later than 120 days, after solicitation of comment, schedule a hearing on the petition and mail notice of the hearing to the petitioner and any other person who has submitted a comment on the petition, as well as to (1) the authorized representative~~designated delegate~~ of each member state; (2) the designated representative of the State and Local Advisory Council; (3) the designated representative of the Business Taxpayer Advisory Council; and (4) the general public as provided in Rule 806.1. The hearing shall take place at the office of the Governing Board, or another location designated by the Issue Resolution Committee. At the hearing, the Issue Resolution Committee will designate the amount of time the petitioner will be allotted to speak, with a minimum of fifteen minutes to be allotted. Other persons whose written requests to speak at the hearing have been received by the Issue Resolution Committee prior to the day of the hearing will be allotted time to speak at the discretion of the Issue Resolution Committee. Within 60 days of the hearing, the Issue Resolution Committee shall meet to consider the petition and any comment received and shall issue a recommendation to the Governing Board. The recommendation shall be in writing and shall provide the Issue Resolution Committee's rationale for the recommendation.

F. Governing Board Action. Within 60 days of receipt of a recommendation from the Issue Resolution Committee, the Governing Board shall meet to consider the recommendation and issue a decision. The decision shall be in writing and shall provide the Governing Board's rationale for the decision. The decision shall be sent to the petitioner and a copy of the decision shall be posted on the website.

G. Expedited Appeal. The time limitations in this rule may be shortened if the petitioner asks for expedited consideration in its request. In that case, the notice to interested parties shall request written comment within 10 days. The Issue Resolution Committee may meet any time after that 10-day period has expired.

Rule 1002. Petition for Resolution. [See Rule 1001, above.]

Rule 1003. Final Decision of Governing Board. [Reserved.]

Rule 1004. Limited Scope of this Article. [Reserved.]

ARTICLE XI

Relationship of Agreement to Member States and Persons

[Reserved.]

ARTICLE XII

Review of Costs and Benefits Associated with the System

[Reserved.]

STREAMLINED SALES & USE TAX

Proposed Amendments (for consideration at April 2005 Implementing States Meeting)
April 12, 2005

AMENDMENT	PURPOSE	RECOMMENDATION	PROGRAMMING COSTS	REVENUE IMPACT TO NORTH DAKOTA	LEGISLATION REQUIRED
1. Section 305: Local Rates & Boundary Changes (Steve Kranz, sponsor)	Allows vendor to use vendor address-based assignment system certified by state in place of state-provided system.	<u>Support amendment.</u>	Not applicable.	Not applicable.	Yes Amend: Section 57-39.4-06(7) Create: subsection (8)
2. Section 305: Local Rates & Boundary Changes Section 307: Database Requirements & Exceptions (Washington, sponsor)	Permit state to provide and maintain an address-based system for assigning tax jurisdictions rather than a zip-code system.	<u>Support amendment</u> – North Dakota has an address-based system in place.	North Dakota is currently working on possible development of zip-code based system. Approval of amendment would remove necessity to commit resources for zip-code based system.	Not applicable.	Yes Amend: Section 57-39.4-06(7) Section 57-39.4-08(3)
3. Section 309: Application of general sourcing rules and exclusions from the rules (Tennessee, sponsor)	Permit a state flexibility in changing the effective date of its sourcing rules until after December 31, 2006, which would affect the sourcing change that would be required by florists.	<u>Neutral</u> - North Dakota has always applied destination sourcing with exception of florist. Without amendment, florist will have to use destination sourcing for tax calculations when ND SSTP legislation becomes effective on 10/1/2005 or 1/1/2006.	Not applicable.	Unknown.	Yes Amend: Section 57-39.4-10(1) Create: subsection (2)(d)
4. Section 312: General sourcing term (Steve Kranz, sponsor)	Deletes term "delivered electronically" for multiple points of use (MPU) provisions.	<u>Do not support amendment.</u> Disagree with extending use of MPU to "tangible personal property", opens door to future expansion to TPP, unknown revenue impact – requires more study, and initially agreed to MPU use for electronically delivered products based on sourcing concerns – sourcing not an issue	Not applicable.	Unknown	Yes Amend: Section 57-39.4(13)

		with delivery of TPP.			
5. Section 312: General sourcing definitions (Steve Kranz, sponsor)	Addresses seller's responsibilities if multiple points of use form are not provided by purchaser.	<u>Support amendment.</u>	Not applicable.	Unknown	Yes Create new subsection to: Section 57-39.4-13
6. Section 317: Administration of exemptions (Steve Kranz, sponsor)	Changes provision allowing state to issue identification number to be used by purchaser when claiming exemption from tax by not allowing.	<u>Do not support amendment.</u>	Not applicable.	Not applicable	Yes Amend: Section 57-39.4-18(e)
7. Section 317: Administration of exemption (Steve Kranz, sponsor)	Creates drop-shipment provision.	<u>Support amendment</u> – North Dakota has always applied in manner proposed by amendment.	Not applicable.	Not applicable.	Yes Create new subsection to: Section 57-39.4-18
8. Section 330: Transition Period (Ohio, sponsor)	Provide states switching from origin sourcing to destination sourcing the option to provide a transition period up to three years.	<u>Neutral</u> - North Dakota, as other states have had to initiate difficult changes (i.e., caps, etc), and when seeking support to retain exceptions, states like Ohio failed to provide. North Dakota has always applied destination sourcing.	Not applicable.	Not applicable.	Yes Create a new section to: Chapter 57-39.4
9. Article VI: Monetary allowance for new technological models for sales tax collections (North Dakota, sponsor)	Provides authority to state for determining the terms of the monetary allowance.	<u>Support amendment.</u>	Yes	Yes	Yes
10. Section 702: Approval of Initial States (South Dakota, sponsor)	State whose statutes, rules, regulations, or other authorities are enacted but not yet in effect can still be counted for purpose of establishing the governing board.	<u>Support amendment</u> – North Dakota will have enacted the necessary statutes, rules and regulations although effective date may be after 9/30/05 or 12/31/05.	Not applicable.	Not applicable.	No
11. Section 807: Open Meetings	Provides governing board with authority to	<u>Support amendment.</u>	Not applicable.	Not applicable.	No

(South Dakota, sponsor)	have a closed session to discuss litigation to which a member state is a party.				
12. Section 811: Business And Taxpayer Advisory Council (Oklahoma, sponsor)	Modify governing board's intent by "recognizing" instead of creating advisory council.	<u>Support amendment.</u>	Not applicable.	Not applicable.	No
13. Library of Definitions in Appendix C, Part I (Steve Kranz, sponsor)	Delete the subsection referencing bundled taxable and nontaxable items from definition of "sales price".	<u>Neutral</u> – The work being completed by the SSTP committee on bundling is addressing this issue.	Not applicable.	Yes	Yes Remove: Section 57-39.2-01(8) (c)
14. Bundled Transaction Definition (Business community, sponsor)	Permits the use of "books and records" approach to calculating the sales tax on a bundled transaction that includes taxable and non-taxable items.	<u>Neutral</u> – North Dakota has permitted this approach with mobile telecommunications and recently extended this provision to telecommunication services.	Not applicable.	Yes.	Unsure
15. Library of Definitions in Appendix C, Part II (Steve Kranz, sponsor)	Adopt telecommunication related definitions.	<u>Support amendment</u>	Not applicable.	Not applicable.	Yes
16. Section 801: Entry into Agreement (Minnesota, sponsor)	Amends SSTP entry provisions by state that extends the date to comply with health care definitions to July 1, 2007.	<u>Neutral</u> – North Dakota is in compliance with health care definitions based on 2005 legislation.	Not applicable.	Not applicable.	Yes HB1043 (pending)

SENATE APPROPRIATIONS COMMITTEE

Monday, February 7, 2005

Senate Bill 2050

Prepared by Gary Anderson, Director of Income, Sales & Special Taxes
North Dakota Office of State Tax Commissioner
Phone 701-328-3471

Streamlined Sales & Use Tax Conforming States:

State	Effective Date	Percentage	
Indiana	1/1/2004	2.22	
Iowa	7/1/2004	1.07	
Kansas	7/1/2003	0.98	
Kentucky	7/1/2004	1.47	
Michigan	9/1/2004	3.62	
Nebraska	1/1/2004	0.62	
North Carolina	1/1/2004	2.93	
Ohio	1/1/2005	4.14	
Oklahoma	11/1/2003	1.26	
South Dakota	1/1/2004	0.28	
West Virginia	1/1/2004	0.66	
Wyoming	1/12/04	0.18	19.43
Minnesota	7/1/2005	1.79	
Tennessee	7/1/2005	2.07	
Utah	7/1/2005	0.81	24.10
Arkansas	1/1/2006	.097	
Nevada	1/1/2006	0.73	
Vermont	1/1/2006	0.22	
North Dakota	1/1/2006	.023	26.25