



Streamlining New York's Sales Tax:

*Examining Requirements
for Compliance with the
Streamlined Sales and
Use Tax Agreement*

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Executive Summary

The extent to which New York should participate in the nationwide sales tax streamlining effort is an important State fiscal policy issue. The goal of this report is to inform the policymaking process by highlighting key features of the Streamlined Sales and Use Tax Agreement.

The Streamlined Sales Tax Project was founded in March 2000, with the purpose of developing measures to simplify and unify state and local sales taxes. Although an undertaking to modernize sales taxes would be intrinsically beneficial for both the governments that impose the taxes and the businesses required to collect them, sales tax streamlining is primarily an effort by states to enhance sales tax collection on mail order, catalog, Internet and other remote sales. The expectation of the states is that out-of-state businesses without a requirement to collect sales tax will voluntarily collect tax when the states adequately streamline their sales taxes.

Background

The simplification measures crafted by the Streamlined Sales Tax Project are contained in a multi-state compact called the “Streamlined Sales and Use Tax Agreement.” The provisions in the Agreement address nearly every aspect of sales taxation. Some of the requirements relate to how a member state may structure its tax. These include: single state and local base; uniform definitions within tax bases; tax rate simplifications; uniform sourcing rules; simplified exemption administration; elimination of “caps” and “thresholds;” and, simplified sales tax holidays.

Other requirements in the Streamlined Agreement are related to sales tax administration. These include: centralized registration; new tax collection technology models; monetary compensation; uniform rules for tax rounding; uniform tax returns; uniform rules for the use of direct pay permits; uniform rules for recovery of bad debt; customer refund procedures; and, tax amnesty.

States that enact legislation sufficiently incorporating the provisions in the Agreement into their own tax laws become members of the compact. So far, 13 states have been accepted as full members and seven as associate members. These states are generally those that

rely on the sales tax for a large share of state revenues, such as Tennessee and South Dakota. Ohio, Michigan and New Jersey are the most populous states that have been accepted as members or associate members.

Streamlining New York's State and Local Sales Tax

New York participated in the Streamlined Sales Tax Project as the Project developed the provisions now contained in the Agreement. Legislation enacted in 2003 increased the level of official New York State participation. It authorized delegates from the Senate, Assembly, Governor and Tax Commissioner to represent New York State before the member states. However, no legislation has been introduced to incorporate the provisions of the Agreement into New York's sales tax law to make the State a member of the multi-state compact.

New York's State and local sales tax does not comply with a large number of the Agreement's provisions. A broad-based revision of the Tax Law would be needed before New York could document compliance with the Agreement. For example, sales tax exemptions would need to incorporate the Agreement's uniform product definitions. This would change the taxability of certain food, candy, soft drinks, telecommunication services, clothing, drugs and medical equipment. Exemption thresholds (such as the \$110 limit on the clothing exemption) and additional tax rates would no longer be permitted.

A large number of the changes necessary to conform would exclusively impact New York's counties and cities that impose sales tax. For example, all localities would be required to impose tax on an identical base. As a result, the practice of granting local options for participation in sales tax exemptions would no longer be permissible. Localities currently may "opt in" to exemptions for clothing, sales to Qualified Empire Zone Enterprises, and residential solar energy equipment. New York City's unique sales tax base would also need to be aligned with the State and local tax base in the rest of the state. This would affect the taxation of a variety of services which are taxable only by New York City.

Another class of conforming changes would require that New York incorporate new administrative features into the sales tax. These provisions include offering a tax amnesty, allowing businesses to use a state-certified software system to perform their sales tax collection responsibilities, acceptance of electronic sales tax returns, and permitting sellers to collect tax on based on the ZIP code of the purchaser.

The following table itemizes most of the areas where conforming changes would likely be needed to address areas of non-compliance in the existing New York sales tax.

Streamlined Requirement	Relevant New York State and Local Sales Tax Provisions
Uniform State and Local Tax Base	<p>New York's State and local sales taxes are non-uniform in the following areas:</p> <ul style="list-style-type: none"> • Local options with respect to various exemptions such as: <ul style="list-style-type: none"> ○ clothing and footwear; ○ Qualified Empire Zone Enterprise purchases; and, ○ residential solar energy systems. • Local sales tax differences in New York City including <ul style="list-style-type: none"> ○ New York City's imposition of a local sales tax on the services of beauty salons, barber shops, health salons, massage, gymnasiums, saunas, and credit bureaus; ○ New York City's local exemption for interior decorating and design services; ○ New York City's unique standard for its exemption of hotel occupancy by "permanent residents;" ○ New York City's taxation of energy used in the production of gas, electricity, refrigeration or steam; ○ New York City's taxation of certain services to exempt tangible personal property used in farm production or in commercial horse boarding; and ○ The tax imposed in New York City on property used at qualified marine terminal facilities. • The sales tax on utility services imposed by twenty school districts, located in 15 counties. • The "segmented" sales taxes imposed by the cities of Lockport and Niagara Falls (Niagara County); Long Beach (Nassau County); and, Newburgh and Port Jervis (Orange County).
Participation in an Online Registration System	New York would need to participate in the Streamlined registration system.
Notice of Tax Rate Changes	All local tax rate changes would have to occur on the first day of a calendar quarter and with a minimum of 60 days notice. The notice requirement is extended to 120 days for retailers selling via printed catalogs.
State and Local Rate Databases	Streamlined requires the state to provide a database identifying State and local sales tax rate and jurisdictional information based on 5- and 9-digit ZIP codes. If the ZIP code area includes more than one tax rate, the database must apply the lowest rate in the ZIP code.
Single Rate	<p>New York's State and local sales taxes uses "additional rates" in the following areas:</p> <ul style="list-style-type: none"> • An additional 5 percent State tax levied on information and entertainment services furnished over the telephone (e.g., 900 numbers); • A cents-per-gallon sales tax on motor fuel and diesel motor fuel; • An additional Metropolitan Transportation Authority rate of 0.375 percent in the 12 counties of the Metropolitan Commuter Transportation District and an associated ¾ cent-per-gallon MCTD sales tax on motor fuel and diesel motor fuel; • A \$1.50 per unit per day fee on hotel occupancy in New York City; • The New York City sales tax on parking services set at 6 percent rather than the 4 percent rate on other goods and services; and • The New York City sales tax additional rate of 8 percent on parking services sold in Manhattan.
Sourcing Rules	New York would need to certify that it is in compliance with 48 sourcing-related items found in the Certificate of Compliance. While generally following "destination sourcing" principles, the Agreement imposes several new requirements.

Streamlined Requirement	Relevant New York State and Local Sales Tax Provisions	
Enactment of Exemptions	<p>When enacting exemptions, New York would need to abide by the following uniform product definitions found in the Agreement:</p> <p>Alcoholic beverages Ancillary services Candy Clothing Clothing accessories or equipment Computer Computer software Coin-operated telephone service Conference bridging service Delivered electronically Detailed telecommunications billing service Dietary supplement Directory assistance Drug Durable medical equipment 800 service Fixed wireless service Food and food ingredients Food sold through vending machines Grooming and hygiene products International [telecommunications service] Interstate [telecommunications service]</p>	<p>Intrastate [telecommunications service] Load and leave Mobile wireless service Mobility enhancing equipment 900 service Over-the-counter drug Paging service Pay telephone service Prepaid calling service Prepaid wireless calling service Prepared food Prescription Prewritten computer software Prosthetic device Protective equipment Residential telecommunications service Soft drinks Sport or recreational equipment Telecommunications service Tobacco Value-added non-voice data service Vertical service Voice mail service</p>
Exemption Administration	New York must adopt the uniform policy with respect to exemption certificates.	
Tax Return Administration	<p>New York would agree to utilize a uniform simplified electronic return that certain sellers may choose to file in lieu of the standard sales tax return.</p> <p>New York would also need to conform to Streamlined requirements with respect to uniform rules for the remittance of funds, uniform rules for the recovery of bad debts, and uniform customer refund provisions.</p>	
Sales Tax Holidays	<p>Any temporary sales tax exemptions in effect while New York is a member state must:</p> <ul style="list-style-type: none"> • Only apply to items for which there is a uniform definition in the Agreement; • Not use local options; • Give sellers at least 60 days' notice before the calendar quarter in which the exemption period begins; and • Abide by the sales tax holiday administrative procedures in the SSUTA. 	
Caps and Thresholds	<p>New York uses sales tax thresholds in the following exemptions:</p> <ul style="list-style-type: none"> • Clothing and footwear items priced under \$110; • Coin-operated telephone services where the charges are 25 cents or less; • Social or athletic club dues below \$10 per year; • Hotel room rent of \$2 or less per day; • Admission charges of 10 cents or less; • Precious metal bullion sold for investment for more than \$1,000; • Tangible personal property sold at a person's residence where the receipts are not expected to exceed \$600 per year (e.g., garage sales); • 75 percent of the admission charge to a qualified place of amusement; and • Race horses purchased through claiming races (partial exemption). 	

Streamlined Requirement	Relevant New York State and Local Sales Tax Provisions																
Library of Definitions	<p>Streamlined conformity would require New York to utilize the uniform definitions contained in the Agreement's Library of Definitions.</p> <p>If a term defined in the Library of Definitions appears in New York's sales and use tax statutes or administrative rules or regulations, the State must adopt the Library definition of the term in the Tax Law in substantially the same language as the Library definition. The Library of Definitions contains 64 definitions contained in three Parts:</p> <p>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.</p> <p>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.</p> <p>Part III Sales tax holiday definitions.</p>																
Taxability Matrix	<p>Streamlined conformity would require New York to complete a taxability matrix specifying its tax treatment of each of the administrative and product definitions in the Agreement's Library of Definitions.</p> <p>A seller or Certified Service Provider that relies on the information in the matrix is relieved from liability for incorrectly collecting tax resulting from erroneous information provided in the matrix by New York.</p>																
Effective Dates for Rate Changes	New York would need to follow transitional rules for service contracts covering a period which overlaps the effective date of a tax rate change.																
Tax Amnesty	New York would offer a tax amnesty from uncollected or unpaid sales or use tax to sellers that voluntarily register under the Agreement.																
Provisions for Technology Models-Method of Remittance	<p>Streamlined conformity would require New York to allow sellers to use the three technology models described in the Agreement:</p> <p>MODEL 1, wherein a seller selects a CSP as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.</p> <p>MODEL 2, wherein a seller selects a CAS to use which calculates the amount of tax due on a transaction.</p> <p>MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.</p>																
Provisions for Technology Models-Monetary Allowances	<p>New York would agree to offer monetary compensation to CSPs and sellers that use a CAS. The Governing Board recommends the following schedule for CSP compensation:</p> <table border="1" data-bbox="597 1543 1031 1837"> <thead> <tr> <th data-bbox="597 1543 971 1577">Tax Remitted per Seller</th> <th data-bbox="971 1543 1031 1577">Rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="597 1608 971 1642">≤ \$250,000</td> <td data-bbox="971 1608 1031 1642">8.0%</td> </tr> <tr> <td data-bbox="597 1642 971 1675">> \$250,000 and ≤ \$1,000,000</td> <td data-bbox="971 1642 1031 1675">7.0%</td> </tr> <tr> <td data-bbox="597 1675 971 1709">> \$1,000,000 and ≤ \$2,500,000</td> <td data-bbox="971 1675 1031 1709">6.0%</td> </tr> <tr> <td data-bbox="597 1709 971 1743">> \$2,500,000 and ≤ \$5,000,000</td> <td data-bbox="971 1709 1031 1743">5.0%</td> </tr> <tr> <td data-bbox="597 1743 971 1776">> \$5,000,000 and ≤ \$10,000,000</td> <td data-bbox="971 1743 1031 1776">4.0%</td> </tr> <tr> <td data-bbox="597 1776 971 1810">> \$10,000,000 and ≤ \$25,000,000</td> <td data-bbox="971 1776 1031 1810">3.0%</td> </tr> <tr> <td data-bbox="597 1810 971 1843">> \$25,000,000</td> <td data-bbox="971 1810 1031 1843">2.0%</td> </tr> </tbody> </table>	Tax Remitted per Seller	Rate	≤ \$250,000	8.0%	> \$250,000 and ≤ \$1,000,000	7.0%	> \$1,000,000 and ≤ \$2,500,000	6.0%	> \$2,500,000 and ≤ \$5,000,000	5.0%	> \$5,000,000 and ≤ \$10,000,000	4.0%	> \$10,000,000 and ≤ \$25,000,000	3.0%	> \$25,000,000	2.0%
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Policy Issues for New York

The streamlined sales tax process leaves it up to each state to determine how to achieve substantial compliance with the Agreement given the state's existing sales tax laws and administrative practices. Complying with the above requirements would necessarily entail policy choices regarding how New York should conform to the Agreement. For example, New York's policymakers would need to agree on a strategy for reforming the sales tax so that it is uniform statewide. Likewise, they would need to reach agreement on how to reduce the number of sales tax rates and how to restructure various consumer product exemptions around the uniform product definitions.

These choices could be based on a specific tax policy objective. For example, decisions that strictly align the State and local sales taxes with the Agreement's provisions limiting the number of tax rates, eliminating local options, and repealing thresholds would advance the goal of simplification of the New York sales tax base. Conversely, decisions intended to work around the Agreement's limitations on the structure of the state's tax base and rates by enacting "replacement taxes" to maintain the status quo would make tax compliance significantly more complex.

Once conformed to the Agreement, a member state must annually re-certify to the compact's governing board that it has maintained compliance with the Agreement's provisions. In order to maintain compliance, New York would need to ensure that any sales tax legislation enacted while it is a member does not violate the terms of the Agreement. Maintaining compliance would also require statutory changes to adopt new provisions added to the Agreement or new interpretations of existing language in the compact promulgated by the governing board. A member state found to be out of compliance with the Agreement may be sanctioned by the governing board or expelled from the Agreement.

Because of its nationwide emphasis, discussions surrounding the streamlining effort tend to focus on large multi-state businesses and remote sellers. However, should New York become a member state, the required statutory and administrative changes would not only affect large multi-state retailers. The changes in the Tax Law that would be required to conform to the Agreement would affect all types of New York businesses, including locally owned and operated businesses that are not involved in making sales through catalogs, web sites, or other remote means.

Revenue Implications for New York

An issue of particular importance for New York is how the changes necessary to make the state a member of the Streamlined multi-state compact would affect State and local sales tax revenues. The revenue impact of conformity legislation would be directly determined by the decisions made by policymakers to reach conformity. The decisions could attempt to balance measures that increase revenue with those that decrease revenue. However, this would not be without risks. Given the sheer number of changes that would be required in the Tax Law to conform to the Agreement, there may be unanticipated revenue swings due to interactions between the provisions of the new tax.

The Streamlined project anticipates that widespread enactment of these measures will entice mail order and Internet-based sellers to voluntarily collect sales tax for the states that have passed the legislation. This would be an important step toward resolving the longstanding issue that states cannot require out-of-state businesses to collect their sales tax unless the business has a physical presence (nexus) in their state.

The best possible scenario for the member states would be Congressional action requiring remote sellers to collect tax on all sales into states that are members of the Agreement. Such a requirement could lead to significant amounts of “new” revenue from Internet and other remote sales for the member states. This revenue may not otherwise be realized because the Streamlined project relies on remote sellers to voluntarily collect tax for states with which they do not have nexus.

Even if there is Congressional action to obligate remote sellers to collect tax for states that are members of the Agreement, there is substantial uncertainty about the amount of possible revenue gains. A widely cited paper by Professors Bruce and Fox at the University of Tennessee estimated that New York’s State and local sales and use tax revenue losses from e-commerce in 2008 will be \$2.4 billion.¹ The Department of Taxation and Finance examined the extent to which large mail order and e-commerce

¹Bruce, Donald and William Fox. *State and Local Sales Tax Revenue Losses From E-Commerce: Estimates as of July 2004*. Knoxville, Tennessee. Center for Business and Economic Research, July 2004.

companies are currently collecting New York sales tax. The Department found that the vast majority of large retailers that have a brick-and-mortar retail presence and a web or catalog presence are already registered to collect tax in New York. The Department estimates that uncollected New York State sales tax in 2005 from business-to-consumer remote sales was approximately \$290 million. For comparison, this is under 3 percent of SFY 2005-06 State sales tax receipts and less than one-half of the net revenue gained in SFY 2005-06 from the suspension of the clothing and footwear year-round exemption for items priced under \$110.

Although nearly every state with a sales tax participated in the Streamlined project as it developed the provisions of the Agreement, only 13 have taken sufficient action to change their tax laws to conform to the Agreement. The transition to the new streamlined sales tax has not been smooth in a number of these states. Conforming to some of the new uniform product definitions has proven difficult. One associate member state (Utah) passed subsequent legislation to end its participation in the compact; other states including Ohio are reluctant to change to destination sourcing.

New York's existing sales tax has been structured to reflect the policy and revenue priorities of State and local policymakers. A significant number of changes to this structure would be necessary before New York could certify that it substantially complies with the Agreement. Some of these changes could promote a simpler tax structure; others would limit the flexibility of the State in crafting its annual financial plan and providing for the revenue needs of localities.

Legislation to modernize and simplify the New York sales tax would be worthwhile, but it is unclear if the proposal developed by the Streamlined project would yield net benefits to New York's taxpayers and local businesses. There are, however, provisions of the Agreement which State policymakers may determine would provide benefits to New York. The likelihood of the State and its localities generating vast amounts of "new" sales tax revenue from taxing mail order and e-commerce sales is low. As the Streamlined project moves forward, New York's policymakers may wish to consider a number of options, including the option of adopting some, but not all, of the Agreement's provisions to realize some benefits of simplification short of full conformity.

Introduction

The Streamlined Sales Tax Project was founded in 2000 to promote simplifications intended to make sales tax compliance less burdensome for multi-state businesses. For five years, this group of state, local and private sector representatives met several times a year to negotiate the substance of these simplifications. In 2002, the group reached a major milestone with delegates from each state (primarily legislators and revenue department officials) organizing these reforms into a multi-state compact known as the Streamlined Sales and Use Tax Agreement (SSUTA, or the “Agreement”).² States become members of this compact by changing their sales tax laws and administrative practices to meet its requirements. Within three years of approving the Agreement, thirteen states had enacted the required legislative changes and the compact took effect.³

The Agreement addresses nearly every aspect of sales taxation, providing the following criteria as the basis for sales tax simplification: state administration of local sales and use taxes; single state and local base; uniform definitions within tax bases; tax rate simplifications; uniform sourcing rules; simplified exemption administration; elimination of “caps” and “thresholds;” and, structure of sales tax holidays.

The Agreement also specifies requirements related to sales tax administration including: centralized registration; new tax collection technology models; monetary compensation; uniform rules for tax rounding; uniform tax returns; uniform rules for the use of direct pay permits; uniform rules for recovery of bad debt; customer refund procedures; and, tax amnesty.

²The Agreement is available at www.streamlinedsalestax.org

³On October 1, 2005, the SSUTA took effect with thirteen initial full member states and five more “associate member states.” Together, these states represent just over 25 percent of the population of the 46 states (including the District of Columbia) imposing a general state sales tax. imposing a general state sales tax.

In exchange for the enactment of these provisions, member states expect out-of-state sellers to voluntarily collect their sales tax, even if there is no legal obligation to do so. Many of the Agreement's requirements (e.g., tax amnesty and new tax collection technologies) provide an incentive for out-of-state businesses to voluntarily collect tax for the member states. In response, more than 1,000 businesses registered as voluntary sellers.⁴ However, the member states also support Congressional action to require businesses to collect tax for member states, even if the business has no physical presence (nexus) in the state.⁵

New York is not a member state of the Streamlined Sales and Use Tax Agreement. For New York to gain membership, substantial legislative and administrative action involving hundreds of policy choices would be required. Following these changes, the Commissioner of the Department of Taxation and Finance must certify to the SSUTA Governing Board that New York's laws, rules, and regulations are substantially compliant with the Agreement.

The purpose of this report is to inform the policymaking process by highlighting key features of the Streamlined Sales and Use Tax Agreement.

The first section provides background on sales and use taxes and on the Streamlined Sales Tax Project.

The report then explains the requirements New York would need to accept to document compliance with the Streamlined multi-state compact and compares these requirements with New York's current law and practice.

Key policy considerations raised given the requirements that New York would need to accept to become a member state of the Streamlined Sales and Use Tax Agreement are then discussed.

⁴As of October 1, 2006.

⁵Senators Enzi (R-Wyoming) and Dorgan (D-North Dakota) introduced separate bills (S.2152 and S.2153) in the 109th Congress that would authorize states to require remote sellers to collect tax on goods and services sold into a state under certain conditions.

The report then examines the potential revenue implications for New York of conformity with the Streamlined Agreement. It studies State and local impacts from potential conformity legislation, and comments on the amount of uncollected sales and use tax revenue from mail order and Internet sales.

Finally, the report provides some concluding remarks.

Background

State and Local Sales Taxes

The sales and compensating use tax (sales tax) is an important revenue source for state and local governments in the United States. Sales taxes were first enacted in 1932 by the State of Mississippi. By 1965, when New York adopted its current sales tax, 39 states and the District of Columbia were imposing sales taxes.⁶

New York State imposes a 4 percent sales tax, with an additional 0.375 percent rate in the Metropolitan Commuter Transportation District (MCTD).⁷ Counties and cities are authorized to impose additional tax rates, often bringing the combined State and local sales tax rate to over 8 percent. As a “consumer tax,” the tax is imposed on the consumer and is collected by the seller. The seller, in turn, remits the collected tax to the Department. However, sellers must remit tax, even if they fail to collect it from the consumer.

In State fiscal year 2005-06, the New York State sales tax generated approximately \$11 billion in State revenue. This accounted for approximately 24 percent of State taxes collected by the Tax Department. The sales tax is also an important local revenue source, raising nearly \$12 billion for localities in SFY 2005-06.

New York’s sales tax generally applies to receipts from the sale of tangible personal property, telecommunications, energy, certain enumerated services, restaurant meals, hotel occupancy, admissions and dues. A wide variety of exemptions exist for certain products (e.g., drugs and medicines), purchasers (e.g., exempt organizations), and uses (e.g., property used in manufacturing or research and development).⁸

⁶Due, John F. and John L. Mikesell. *Sales Taxation*. The Urban Institute Press, 2nd ed., 1994.

⁷The Metropolitan Commuter Transportation District encompasses New York City and the Counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

⁸See the *2006-07 Tax Expenditure Report* published jointly by the Department of Taxation and Finance and the Division of the Budget, for a complete list of sales tax exemptions and credits. It is available at <http://www.budget.state.ny.us>

Forty-four states and the District of Columbia, in addition to New York, impose a sales tax. Unlike state income taxes (that could be patterned after a federal income tax), sales taxes developed independently. In some cases states modeled their sales taxes after the taxes of other states. However, sales taxes are generally recognized for a lack of uniformity across states and for diverse administrative rules. Tax rates, structure, and bases vary from state-to-state and within states. States have also created unique administrative procedures for collecting and remitting the tax due.

Across the United States, state sales tax rates range from a low of 2.9 percent in Colorado to a high of 7 percent, with an average of just over 5 percent. Local sales taxes are authorized in 36 states, including Alaska which does not have a state sales tax. Local rates range from 0.1 percent to 5.5 percent and result in a combined average state and local rate of nearly 7.5 percent.⁹ In some states, local sales taxes are collected and administered by the state. In other states, such as in Alabama, Colorado, and Louisiana, local sales taxes are collected and administered by the imposing locality.

In addition to variations in tax rates and in the use of local sales taxes, sales taxes differ in their legal incidence. Some states impose a gross-receipts-type tax structured as a “privilege tax” on the vendor, while other states (including New York) have a “consumer tax” where the legal incidence is on the purchaser.¹⁰ Finally, rules for sourcing taxable transactions to state and local governments are not standardized. Some states source transactions on an origin basis, where the situs of the taxable transaction is the seller’s place of business, and others (including New York) situs a taxable transaction to the place of delivery.

Overall, sales taxes provide about one-third of state revenues. Nevertheless, large differences exist in states’ reliance on sales taxes as a revenue source. In several states, the sales tax provides the most significant source of state revenue. Table 1 lists the ten states that rely most heavily on the sales tax and the percent of state revenue derived from the sales tax.

⁹New York State Department of Taxation and Finance, *New York State Tax Sourcebook* (April 2005). Note: local rates in Alaska not included in this comparison. Alaska’s local rates are as high as 8 percent.

¹⁰Due, John F. and John L. Mikesell. *Sales Taxation*. The Urban Institute Press, 2nd ed., 1994.

Table 1. States Relying on the Sales Tax for a Large Percentage of State Tax Revenue	
State	Sales Tax as Percent of State Tax Collections (fiscal year 2003)
Washington	61.78
Tennessee	61.45
Florida	55.62
South Dakota	53.41
Nevada	53.09
Hawaii	50.22
Arizona	49.85
Mississippi	49.72
Texas	49.31
Nebraska	42.62
<i>New York</i>	<i>21.80</i>
Source: <i>State Tax Collections</i> (2003), U.S. Department of Commerce, Bureau of the Census, as reported in the New York State Tax Sourcebook (Table 3)	

Sales taxes typically apply to a similar package of tangible personal property, telecommunications, energy, restaurant meals, hotel occupancy, and admissions. States vary, however, with respect to the taxation of services. Several states tax few, if any, services while a handful of states tax nearly all services. Furthermore, a wide variety of exemptions exist throughout the country for certain products (e.g., food), purchasers (e.g., exempt organizations), and uses (e.g., property used in farming).

The disparate state and local sales tax systems produce a compliance burden for multi-state businesses obligated to collect or pay the tax. Even businesses that do not primarily make retail sales are impacted by sales tax complexities. For example, firms engaged in manufacturing or wholesaling must follow various state and local administrative rules regarding the issuance of exemption certificates.

Remote Sales

For consumers, a common expectation is that the retail business selling goods and services knows the applicable sales tax law and collects the correct amount of tax. However, in the case of remote sales (mail order and Internet-based sales), the retailer is not always obligated to collect the tax.

Under certain circumstances, a business located outside of a state cannot be required to collect tax on sales shipped or mailed into the state. In *Quill Corp. v. North Dakota* 504 U.S. 298 (1992), the United States Supreme Court ruled that a state cannot require an out-of-state business to collect its sales or use taxes unless the business has nexus with that state. In order to have nexus, the company must have some type of physical presence in a state such as a store or other business location in the state or a sales representative active in the state. In *Quill*, the Court also noted that collection of tax on remote sales is an issue that Congress has the power to resolve under the Commerce Clause of the U.S. Constitution.

Even though some remote sellers may not be legally required to collect tax, their sales are not “tax free.” When an individual or business buys a taxable good or service and is not charged tax, they must pay it themselves.

The inability of states to collect tax on remote sales is a longstanding concern. The Internet’s potential for rapidly increasing the amount of such sales provided a heightened urgency to this problem.

The Streamlined Sales Tax Project

In 2000, an initiative known as the Streamlined Sales Tax Project (SSTP) was formed to simplify and modernize state sales taxes.¹¹ With the input of over 30 states and the District of Columbia, the National Conference of State Legislatures, National Governors Association, Multistate Tax Commission, Federation of Tax Administrators, and various business representatives, the SSTP developed proposals for tax law simplifications and new technology solutions intended to ease sales tax compliance across states.

¹¹The SSTP’s origins can be traced to the Advisory Commission on Electronic Commerce that was created by the 1998 Internet Tax Freedom Act.

A state could become a voting participant in the SSTP through enabling legislation or Executive Order. States also had the option of participating as nonvoting “observer states.” At the time that the Streamlined initiative was formed, five states, including New York, had no official connection with the SSTP as either a participating state or an observer state. However, the Department closely monitored the progress of the SSTP and attended most of its meetings.

Streamlined Sales Tax Implementing States

In November 2001, model legislation called the Streamlined Sales and Use Tax Act was developed separately by the SSTP and the National Conference of State Legislatures. States passing either version of the Act became part of a temporary governance structure called the Streamlined Sales Tax Implementing States. The Implementing States’ objective was to finalize the tax simplifications which had been under development by the SSTP and to develop a strategy for their adoption by states via legislation.

The provisions agreed to by the Implementing States to accomplish the goal of sales tax simplification are contained in the Streamlined Sales and Use Tax Agreement. The Implementing States met eight times in 2002 to develop the Agreement and in November 2002 delegates from the 35 Implementing States voted to approve the Agreement. The Implementing States continued to meet annually in 2003, 2004, and 2005 to refine and supplement the Agreement. The Implementing States held its final meeting on August 28, 2006.

New York legislation passed on May 15, 2003, enacted Tax Law Article 28-B– *The Simplified Sales and Use Tax Administration Act*– making New York State an official participant in the Streamlined Sales Tax Project.¹² This statute also made New York an Implementing State. Delegates from New York representing the Governor, Senate, Assembly, and Tax Commissioner were appointed to the Implementing States and attended its meetings.¹³

¹²Part S3 of Chapter 62 of the Laws of 2003.

¹³Tax Law Section 1173 authorizes the appointment of four delegates: one delegate appointed by the Governor; one delegate appointed by the Temporary President of the Senate; one delegate appointed by the Speaker of the Assembly; and the Commissioner of Taxation and Finance or his or her designee.

**Member States of
the Streamlined
Sales and Use Tax
Agreement**

Article 28-B “authorizes and directs” the Department to enter into the Streamlined Sales and Use Tax Agreement. However, it does not amend any provisions of the State and local sales tax in Tax Law Articles 28 or 29. Nor does it commit New York to enact any legislation in the future to conform its sales tax to the requirements of the Streamlined Sales and Use Tax Agreement.

By its own terms, when 10 states representing 20 percent of the population of states imposing a sales tax are certified as having conformed their states’ laws to the provisions in the Agreement, the Agreement becomes effective and these states form a “Governing Board.”

The Agreement took effect on October 1, 2005, with a Governing Board of 13 initial full member states. The Streamlined Sales Tax Governing Board was incorporated under the laws of Indiana as a non-profit domestic corporation. The Bylaws set forth the operation and administration of the Governing Board, its committees and advisory councils in accordance with the Agreement.

Two categories of member states currently exist on the Agreement’s Governing Board. Full member states are those that were found to be in substantial conformity with the provisions of the Agreement. Associate member states are either, (a) states whose conforming changes are sufficient to comply with each provision in the Agreement but the statutory changes have not yet taken effect; or, (b) states whose conforming changes are in effect but do not substantially comply with each provision in the SSUTA. Associate member states not substantially compliant with the Agreement must re-petition for full membership by January 1, 2008. Table 2 lists the member states.

Table 2. Member States of the Streamlined Sales and Use Tax Agreement as of September 1, 2006			
Full Member States (13)*		Associate Member States (7)	
Indiana	New Jersey	Arkansas	Utah**
Iowa	North Carolina	Nevada	Vermont
Kansas	North Dakota	Ohio	Wyoming
Kentucky	Oklahoma	Tennessee	
Michigan	South Dakota		
Minnesota	West Virginia		
Nebraska			
*Rhode Island and Vermont will be full member states on January 1, 2007 pending completion of streamlined requirements.		**S.B. 233, enacted March 17, 2006 and effective July 1, 2006, repealed the sourcing provisions that would have put Utah in conformity.	

Streamlined Sales Tax Advisory Councils

The Agreement charges the Governing Board with creating a State and Local Advisory Council and recognizing a Business Advisory Council.¹⁴

The State and Local Advisory Council (SLAC) advises the Governing Board on matters pertaining to the administration of the Agreement.¹⁵ These matters may include, for example, admission of states into the SSUTA, drafting issue papers to explain provisions in the SSUTA, or any other issues as directed by the Governing Board.

New York is not a member state of the Agreement. However, New York is a member of the SLAC by virtue of its status as a participating state in the Streamlined Sales Tax Project. In effect, the SLAC has assumed the role of the now-defunct SSTP. Department staff members attend State and Local Advisory Council meetings and the teleconferences held by its various subcommittees.

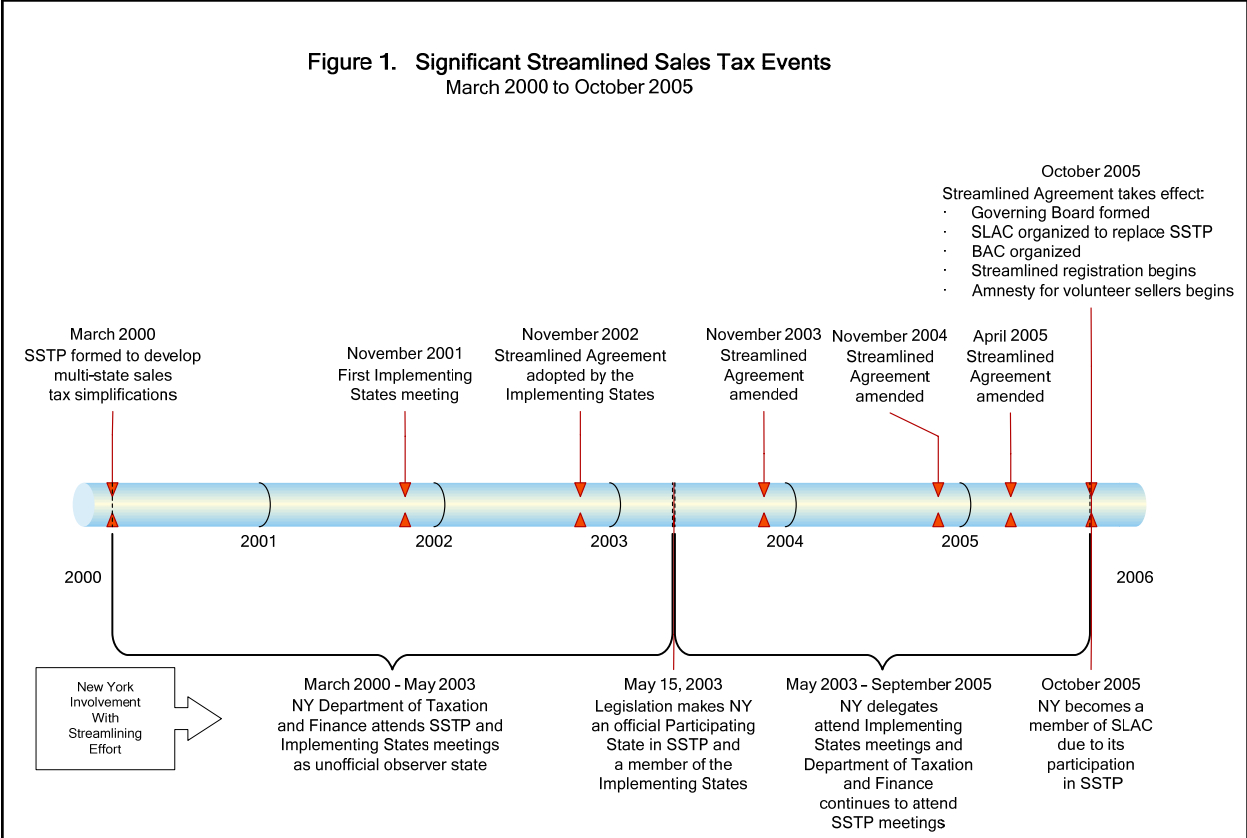
The Agreement also authorizes the Governing Board to recognize a Business Advisory Council (BAC) from the private sector for advice on matters pertaining to the Agreement.¹⁶ The BAC provides a forum for members of the private sector to express any concerns or suggestions related to the Agreement.

Figure 1 provides a timeline of the development of the Streamlined Sales Tax Project and New York's involvement.

¹⁴These councils are provided for in Section 810 and Section 811 of the Agreement. At its August 29, 2006 meeting, the Governing Board amended Section 703 of the Agreement to establish a new category of "Advisor States" for former Implementing States.

¹⁵The SLAC chair is Diane Hardt of the Wisconsin Department of Revenue. The SLAC Steering Committee members are Richard Dobson (KY), Sherry Harrell (TN), Craig Rook (NJ), Tom Kimmett (PA), Cindi Yates (WA), Mike Bailey (representing the Government Finance Officers Association), and Sonny Brasfield (representing the National Association of Counties).

¹⁶The BAC Executive Committee Members are Warren Townsend, (Wal-Mart), Meredith Garwood (Time Warner Cable), Stephen Kranz (Council on State Taxation), and Deborah Bierbaum (AT&T).



Requirements New York Must Accept to Participate in the Streamlined Sales and Use Tax Agreement

Although legislation has not been introduced to comprehensively conform the New York State and local sales tax to the SSUTA's requirements,¹⁷ policymakers in New York have periodically discussed the State's relationship to the streamlining effort.¹⁸ Participation in the streamlining effort by local government associations including the National League of Cities, the U.S. Conference of Mayors, the Government Finance Officers Association, and the National Association of Counties, and by business interests including the Retail Council of New York State, has also prompted discussion of the streamlining effort in New York.

This section examines the requirements of the Agreement with which New York would need to be in "substantial compliance" in order to become a member state. Some areas where New York's sales tax does not meet the Agreement's requirements are quickly discernable, such as the requirement for a common State and local tax base. However, non-conformity also exists in the less readily apparent features of the sales tax.

States apply to become a party to the Agreement by submitting a petition for membership and a Certificate of Compliance to the Governing Board.¹⁹ The Certificate of Compliance is signed by the chief executive of the state's tax agency and documents that that state's sales tax laws, rules and regulations are substantially compliant with each of the requirements set forth in the Agreement.

¹⁷The New York State Senate's 2005-06 budget proposal (S.995-C) included provisions related to the adoption of the SSUTA definitions of clothing, food, soft drinks, candy and similar products.

¹⁸See, for example, New York State Senate, Senate Finance Committee's *Staff Analysis of the SFY 2004-05 Executive Budget* (January 2004), and the March 2003 *New York State Revenue Report* published by the New York State Assembly Ways and Means Committee.

¹⁹See SSUTA Section 801.

The Certificate lists each section of the compact where compliance is necessary, asks whether the section's requirements are met by the state's law, regulation or administrative practice, requires a citation to the legal authority (e.g., tax law section) supporting the state's assertion that it meets that particular requirement, and requests the effective date for conforming changes.²⁰

The Agreement's requirements are not set out in a uniform model sales tax code that states enact. Rather, the Agreement provides "a blueprint whose basic requirements needed to be ... implemented by more detailed legislation at the individual state level...."²¹ Accordingly, the streamlined sales tax process leaves it up to each state to determine how to achieve substantial compliance with the Agreement.

Those states that are approved as being in substantial compliance took different approaches both to defining and achieving such compliance. Some states, such as Kansas, achieved compliance via legislation that provided for a comprehensive reform of the sales tax structure. Among other conforming changes, Kansas' compliance legislation re-engineered its tax from origin-based (where goods and services are taxed based on the location where sold) to destination-based (where goods and services are taxed based on the location where delivered).²² New tax forms, exemption documents, audit procedures, rate databases, and tax processing systems all emanated from that single change.

Others, such as New Jersey, took a more conservative approach. For example, rather than replace its "tax bracket tables" (used to determine the amount of tax to collect) with the Streamlined rounding rule (which uses mathematical rounding to determine the amount of tax to collect) New Jersey's conformity legislation simply added the Streamlined rounding provision to existing law as an optional method sellers could choose.²³ This allowed New Jersey to meet the Streamlined certification requirement "that the state has repealed any requirements for sellers to collect tax on bracket system" without actually eliminating the bracket system.

²⁰The completed and approved Certificates of Compliance for the member states and associate member states are available on the Streamlined project's website at www.streamlinedsalestax.org.

²¹Hellerstein, Walter and John A. Swain. *Streamlined Sales and Use Tax 2005*. RIA, 2005, page 2-14.

²²See H.B. 2005 effective July 1, 2003.

²³See S-1958/A-3473, P.L. 2005, Chapter 126, approved July 2, 2005.

A third strategy involved a blended approach. States such as North Carolina and North Dakota reformed their sales taxes to comply with the Agreement while, at the same time, creating new “replacement taxes” that maintained the status quo with respect to certain provisions that the Agreement disallowed. For example, prior to conforming to the Agreement, North Carolina had a general state sales tax rate of 4.5 percent and a special 1 percent rate for sales of fuel and machinery to farms, mills and certain other industries capped at \$80 per article. To comply with the Agreement’s requirement for a single state tax rate and its prohibition of tax caps, North Carolina exempted these sales from the sales tax. However, to maintain its original tax treatment North Carolina imposed a new tax on these sales at the same 1 percent rate and \$80 cap.²⁴

The balance of this section examines the Streamlined Sales and Use Tax Agreement’s requirements using a format analogous to the Streamlined Certificate of Compliance. It describes 19 particular SSUTA requirements (or groups of requirements), explains New York’s current law and practice with respect to that topic, and comments on whether New York could document compliance under current law. It does not suggest ways that the Tax Law should be amended to resolve areas of non-conformity. The order of the requirements generally follows the Certificate of Compliance. Because there has not been a uniform approach to defining or achieving substantial compliance, this section should not be viewed as providing definitive conclusions with respect to New York’s current state of compliance. “Substantial compliance” is determined by the Governing Board, and the Board’s decisions are final and essentially unreviewable.

²⁴The Machinery, Equipment, and Manufacturing Fuel Privilege Tax took effect on January 1, 2006. See North Carolina Department of Revenue, Directive SD-05-1, *Machinery, Equipment, and Manufacturing Fuel Tax*.

SSUTA Requirement: State Level Administration

A key feature of the Streamlined Agreement is state administration of state and local sales and use taxes. The specific requirement for state tax administration of state and local sales and use taxes is found in Section 301 of the Agreement.

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

New York's Current Law and Practice

The Department collects and administers both the State and local sales and use taxes. Its responsibilities encompass registering vendors, processing and auditing State and local returns, providing necessary information to the New York State Comptroller for distributing sales and use tax collections to localities, and furnishing sales tax data and statistics.

The Department enforces the Tax Law through operation of audit and compliance programs. To supplement these efforts, the Tax Law authorizes the Commissioner to delegate certain audit functions to the City of New York and to Nassau and Suffolk counties.²⁵

²⁵See Tax Law Section 1142(10).

*Evaluation of Compliance
with the Streamlined
Requirement*

It appears that New York State could document substantial compliance with this requirement. New York currently provides State level administration of sales and use taxes.

Comments

The audit activity conducted by New York City, Nassau County and Suffolk County as currently authorized in the Tax Law appears to comply with the terms of the Agreement.

SSUTA Requirement: Uniform State and Local Tax Base

Over the course of the Agreement's development, multi-state sellers advised the Streamlined Project that the single most difficult issue in sales tax administration was dealing with multiple tax bases within states.²⁶ To simplify this area of sales tax administration, the Agreement requires a single state and local tax base.

The requirement for a single state and local tax base is found in Section 302 of the Agreement.

After December 31, 2005, the tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

New York's Current Law and Practice

Local governments are authorized to impose sales and compensating use taxes. These taxes are generally levied by counties and cities and largely conform to the State sales tax base. However, the State tax base and the local tax base differ in several areas. These areas of difference include:

- local options with respect to various exemptions such as:
 - o clothing and footwear;
 - o sales to Qualified Empire Zone Enterprises; and
 - o residential solar energy systems.

- local sales tax differences in New York City including:
 - o New York City's imposition of a local sales tax on the services of beauty salons, barber shops, health salons, massage, gymnasiums, saunas, and credit bureaus;
 - o New York City's local exemption for interior decorating and design services;

²⁶Hardt, Diane and Doug Lindholm. *A Lawmaker's Guide to the Streamlined Sales Tax Project*. The Deloitte & Touche Center for Multistate Taxation, 2002, page 5.

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- o New York City’s unique standard for its exemption of hotel occupancy by “permanent residents;”
 - o New York City’s taxation of energy used in the production of gas, electricity, refrigeration or steam;
 - o New York City’s taxation of certain services to exempt tangible personal property used in farm production or in commercial horse boarding; and
 - o New York City’s taxation of property used at qualified marine terminal facilities;
- the sales tax on utility services imposed by twenty school districts, located in 15 counties;²⁷ and
 - the “segmented” sales taxes imposed by the cities of Lockport and Niagara Falls (Niagara County); Long Beach (Nassau County); and, Newburgh and Port Jervis (Orange County). These cities impose sales tax on selected goods and services instead of imposing tax on the entire State tax base.²⁸

Most of these local tax provisions have been in place for decades and involve tens of millions of dollars of local tax revenue. In some cases the related tax revenues have been dedicated to municipal and other bonds. For example, the tax imposed in New York City on energy used in the production of gas, electricity, refrigeration, or steam, is imposed in support of Municipal Assistance Corporation bonds.²⁹

Evaluation of Compliance with the Streamlined Requirement

New York would not be able to document compliance with the Agreement’s requirement for a uniform state and local tax base. New York’s local options for certain exemptions and the unique local sales tax base of New York City, certain school districts, and the four cities imposing the segmented tax option violate this requirement of the Agreement.

Comments

Complying with the Streamlined Agreement would require aligning the State and local tax bases such that they are uniform throughout the State.

²⁷School districts within cities with populations less than 125,000 may impose sales tax on the limited tax base of utility services pursuant to Tax Law Section 1212.

²⁸Counties and cities can impose sales tax on the same goods and services as the State or, at their option, on any combination of the following four portions of the State tax base: utility services; food and drink sold by restaurants, taverns and caterers; hotel room occupancy; and, certain admission charges and dues. See Tax Law Section 1210(b)(1).

²⁹See State Finance Law Section 92-d.

SSUTA Requirement: Participation in an Online Registration System

A fundamental concept of the Streamlined Agreement is that sellers registering with one member state voluntarily agree to collect and remit sales tax for taxable sales into all of the member states. To facilitate this, the Agreement establishes an online registration system.

The online registration system provides sellers with “one-stop shopping” to register in every member state. The online registration system is required by Section 303 which states, in part:

Each member state shall participate in an online sales and use tax registration system in cooperation with the other member states.³⁰

To participate in the online registration system, member states must adopt the technology to retrieve and process the registrations completed via the online system. In addition, participation in this system requires member states to accept voluntary registrations under a simplified uniform application that does not require an applicant’s signature.³¹

New York’s Current Law and Practice

A seller registers to collect New York’s sales tax by applying for a sales tax *Certificate of Authority*. The application form for this certificate is available in a paper format or online.³²

The Department’s application includes detailed information about the business and its owners.³³ The Tax Law provides five days for the Department to review the application and to either issue or deny the Certificate. The Commissioner may deny the application if the applicant has outstanding tax liabilities or has been convicted of a tax crime. The Tax Law also permits the Commissioner to revoke the *Certificate of Authority* of a business that repeatedly fails to pay its sales tax liabilities.³⁴

³⁰Other related requirements are found in SSUTA Sections 211, 401, 402, 403, 404, 601, 602, and 603.

³¹The registration system can be viewed at <https://www.sstregister.org/sellers>

³²The online format is available via the New York State’s Online Permit Assistance and Licensing website (OPAL) at <http://www.nys-opal.com>

³³See form DTF-17, *Application for Registration as a Sales Tax Vendor*.

³⁴See Tax Law Section 1134(4)(B) for requirements related to the Certificate of Authority.

*Evaluation of Compliance
with the Streamlined
Requirement*

New York's existing online registration program would not be sufficient to comply with the requirement for participation in the Streamlined online registration system. First, the online system required by the Streamlined Agreement facilitates the registration of sellers in multiple states. New York's online registration program only provides a registration for New York. Second, states participating in the Streamlined registration system are limited to asking for a common set of information from voluntary applicants. New York's application for registration asks for information not included in the uniform set of questions. For example, New York's application asks sellers if they sell tires— an indicator that the New York State waste tire fee may be due from them. Finally, when a seller completes an application using the Streamlined registration system, they have completed the registration with the member states. New York's online registration system uses the Internet to transmit the application information. However, the registration is not processed until the applicant's information has been reviewed by the Department and their registration approved.

Comments

The Streamlined online registration system is in place today. Upon application for membership in the Agreement, the State would need to document its ability to participate in the Streamlined registration system.

SSUTA Requirement: Notice of Tax Rate Changes

Sellers must stay current with the state and local tax rates in each jurisdiction where they make sales and are registered to collect tax. For large retailers collecting tax nationwide, this means tracking state and local rates in over 7,500 taxing jurisdictions. For a remote seller, this obligation is limited to states where the business has nexus. However, under the Streamlined system remote sellers volunteer to collect tax in all member states—including states in which they do not have a nexus.

The Agreement addresses the burden of maintaining up-to-date tax rate information by establishing specific requirements pertaining to the timing of sales tax rate changes. In summary, these require local tax rate changes to occur on the first day of a calendar quarter with a minimum of 60 days notice. The notice requirement is extended to 120 days for retailers selling via printed catalogs.

Section 304 states, in part:

Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:

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

Section 305 requires, in part:

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

- A. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.*

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- B. *Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to sellers*
 - C. *For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.*

New York's Current Law and Practice

New York Tax Law requires local laws imposing sales tax or changing the sales tax rate to go into effect on the first day of March, June, September, or December. In addition, the locality must provide at least 90 days' notice of a rate change. However, the Commissioner has the authority to waive the 90 day notice requirement to a period of not less than 30 days.³⁵

Notwithstanding these requirements, the New York Legislature can provide alternative effective dates for a local rate change. For example, legislation authorizing an Erie County sales tax rate increase was enacted on January 10, 2006, and took effect just five days later on January 15, 2006.³⁶

Evaluation of Compliance with the Streamlined Requirement

New York could not document compliance with the Agreement's requirements in Section 305 regarding the advance notice and the effective date of local sales tax rate changes. New York would not be in compliance because New York's sales tax rate changes do not take effect on the first day of a calendar quarter. Moreover, the New York Tax Law does not mandate the required notification time periods for local rate changes.

The State would only need to make a "reasonable effort" to limit changes in the state sales tax rate to the first day of a calendar quarter.

Comments

The Agreement requires local rate changes to occur at the beginning of a calendar quarter. Adopting this requirement, while maintaining the existing sales tax quarters, would complicate tax administration and compliance as rate changes would occur during a reporting period. Remediating this would require New York to switch the sales tax to calendar quarter-based filing or to monthly filing.

³⁵See Tax Law Section 1210(d).

³⁶Chapter 4 of the Laws of 2006.

SSUTA Requirement: State and Local Rate Databases

In those states that have local sales taxes, a difficulty faced by many sellers (especially remote sellers) is collecting the proper local tax. For each and every taxable transaction where a seller ships products to a customer or provides taxable services at a customer's location, the seller must correctly answer the following two questions:

- What county, city, or other taxing jurisdiction is my customer located in?
- What is the tax rate in that jurisdiction?

The expense associated with accurately responding to these two simple questions has been cited as a barrier to the voluntary collection of sales tax on remote sales.³⁷

The Streamlined Agreement mitigates the expense of identifying the taxing jurisdiction and rate by requiring member states to develop a database assigning each 5-digit and 9-digit ZIP code in a state to a specific tax jurisdiction and rate.³⁸

Under the Streamlined approach, with just the 5-digit ZIP code where a product is delivered, the seller (or its agent) can use the database to easily look up the tax jurisdiction and rate assigned to that ZIP code. A seller is held harmless from errors made in the computation, collection, or reporting of tax if it relied on the information in the state-provided database.³⁹

The Certificate of Compliance summarizes the necessary requirements for member states with the following four questions.⁴⁰

³⁷Hardt, Diane and Doug Lindholm. *A Lawmaker's Guide to the Streamlined Sales Tax Project*. The Deloitte & Touche Center for Multistate Taxation, 2002, page 10.

³⁸The Agreement also provides rules for sourcing the sale to a particular jurisdiction. Those rules are discussed elsewhere in this section.

³⁹The detailed requirements can be found in the Agreement Sections 305 (D, E, F, G, and H), 306 and 307.

⁴⁰The databases provided by Section 305, subsections (D), (E), (F), and (G) (which include the ZIP code database) are not required to be available at the time a state petitions for membership. However, a seller that did not have a requirement to register in a state prior to registering pursuant to this Agreement or a CSP shall not be required to collect sales or use taxes for a state until the first day of the calendar quarter commencing more than sixty days after the state has provided the required databases.

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- Does the state provide a database identifying rate and jurisdictional information based on 5-digit and 9-digit ZIP codes?
 - Does the database provided by the state apply the lowest rate in the ZIP code if the area includes more than one tax rate?
 - Does the state commit to participating with other states in development of an address-based system?⁴¹
 - Does the state relieve the seller and the Certified Service Provider⁴² from liability for collecting an incorrect amount of tax by relying on data provided by the state on rates, boundaries, and jurisdiction assignments?

New York's Current Law and Practice

Local sales tax jurisdictions consist of counties, cities, or school districts. The location where a sale takes place, (i.e., the actual street address) determines the tax rate and the municipalities receiving the local share of the rate.⁴³

The Department does not have an electronic database associating 5-digit and 9-digit ZIP codes with county and city sales tax rates. However, the Department has worked with the State's Office of Cyber Security and Critical Infrastructure Coordination to develop an electronic sales tax jurisdiction and rate lookup service.⁴⁴ This new service allows businesses anywhere in the world to utilize the Department's web site to determine, for any address in New York State, the proper local taxing jurisdiction, the correct combined State and local sales tax rate and the local jurisdiction reporting code for use in filing sales tax returns. This function is more accurate than a database based on ZIP codes in determining the correct local taxing jurisdiction for New York addresses.

⁴¹The Agreement was amended on October 1, 2005, to replace this requirement with an option for states to provide an address-based database. The Certificate of Compliance has not been revised to reflect this amendment.

⁴²Certified Service Providers are agents certified under the Agreement to perform a seller's sales tax functions.

⁴³Community listings are provided in Publication 717 and are available at the Department's Web site, www.nystax.gov.

⁴⁴The New York State Sales Tax Jurisdiction and Rate Lookup function is available at <http://www7.nystax.gov/STLR/stlrHome>

*Evaluation of Compliance
with the Streamlined
Requirement*

New York would not be able to document compliance with the Agreement's rate database requirements under Sections 305, 306, and 307. New York has not developed a database that associates each 5-digit and 9-digit ZIP code with a tax rate and tax jurisdiction. New York's Sales Tax Jurisdiction and Rate Lookup function, although more accurate than a ZIP code-based database for assigning tax rates and jurisdictions, would not meet the Agreement's requirements.

Comments

To fully participate as a member state the Department would need to create the required databases and follow the related procedures for assigning local rates.

ZIP code boundaries do not coincide with the boundaries of counties or cities. In such cases, the Streamlined Agreement directs member states to assign to the ZIP code the county or city with the lowest tax rate. For example, the 12118 ZIP code for "Mechanicville, New York" covers homes and businesses located both in Saratoga County (7 percent sales tax rate) and in Rensselaer County (8 percent sales tax rate). Under the Agreement's requirements, sales shipped to any address in the 12118 ZIP code would be charged the lower Saratoga County rate and presumably reported as Saratoga County sales. As Saratoga County sales, subsequent distribution of the local tax revenue from sales delivered in the 12118 ZIP code would be to Saratoga County.

In New York it is common for bordering sales tax jurisdictions to have the same sales tax rate. The Agreement's approach could lead to disputes regarding which jurisdiction should receive the tax revenue related to sales assigned to those particular overlapping ZIP codes.

The Project anticipates that in the future, states will develop a downloadable database containing every street address and assigning each address with a sales tax rate. Until such time, the Agreement's requirement to associate local sales tax jurisdictions with ZIP codes would redistribute local sales tax revenue among those counties and cities with shared ZIP codes.

SSUTA Requirement: Single Rate

The Agreement limits each state to one general state sales tax rate and permits a second state rate on certain items (e.g., food and drugs). Each local jurisdiction is allowed one local sales and use tax rate. These requirements do not apply to certain utility services, motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Tax rate simplifications are provided for in Section 308 of the Agreement where it states:

A. No member state shall have multiple state sales and use tax rates on items of personal property or services after December 31, 2005, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the Agreement.

B. A member state that has local jurisdictions that levy a sales or use tax shall not have more than one local sales tax rate or more than one local use tax rate per local jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates must be identical.

C. The provisions of this section do not apply to sales or use taxes levied on electricity, piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

New York imposes sales and use tax at the rate of 4 percent.⁴⁵ An additional 5 percent State tax is levied on information and entertainment services furnished over the telephone (e.g., 900 numbers),⁴⁶ and an additional 5 percent tax is imposed on passenger car rentals.⁴⁷ The State imposes a rate of zero percent on residential energy sources.⁴⁸ The State also imposes an 8 cent-per-gallon sales tax on motor fuel and diesel motor fuel.⁴⁹

The State imposes a Metropolitan Transportation Authority rate of 0.375 percent in the 12 counties of the Metropolitan Commuter Transportation District.⁵⁰ An associated $\frac{3}{4}$ cent-per-gallon sales tax on motor fuel and diesel motor fuel is imposed in the MCTD.⁵¹

A \$1.50 per unit per day fee on hotel occupancy in New York City applies in addition to the sales tax on the rent for hotel occupancy.⁵²

Counties and cities are authorized by the Tax Law to impose a local sales tax in one-half percent increments, up to a maximum of 3 percent.⁵³ All counties and 24 cities impose some form of local sales tax. In addition, 8 cities (including New York City) and 47 counties have sought and received legislative authority to impose tax at a rate above the 3 percent maximum, ranging from 0.5 percent to 2 percent above the statutory maximum.

Counties and cities may impose tax on residential energy in one-half percent increments up to their maximum rate.

In New York City, the local portion of the sales tax on parking services is set at 6 percent rather than the 4 percent rate on other goods and services.⁵⁴ The City of New York imposes a second additional rate of 8 percent on parking services sold in Manhattan.⁵⁵

⁴⁵See Tax Law Section 1105.

⁴⁶See Tax Law Section 1105(c)(9).

⁴⁷The additional tax does not apply to leases of one year or longer, or to vehicles weighing more than 9,000 pounds or carrying more than 9 passengers.

⁴⁸See Tax Law Section 1105-A.

⁴⁹See Tax Law Section 1111(m)(1).

⁵⁰See Tax Law Section 1109.

⁵¹See Tax Law Section 1111(m)(2).

⁵²See Tax Law Section 1104.

⁵³See Tax Law Section 1210.

⁵⁴See Tax Law Section 1107.

⁵⁵See Tax Law Section 1212-A.

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New York would not be able to document compliance with the Agreement's requirement for a single State sales tax rate and its requirement for one local rate per jurisdiction. Both the State and the local sales taxes within New York utilize multiple tax rates. Examples include the additional State rate on certain entertainment services and the additional local rates of tax on parking services in New York City.

Comments

The State's additional 5 percent rate on passenger car rentals is permitted under the Agreement, as is the State's rate of zero percent on residential energy. County and city rates on residential energy would also appear to be permitted under the Agreement. However, the streamlined "simplified electronic return" does not accommodate these additional rates. Therefore, new administrative processes would be required to collect these additional local rates from sellers using the electronic return.

SSUTA Requirement: Sourcing Rules

“Sourcing” refers to identifying where a sale takes place. The Agreement requires sellers to source retail sales of property, services, and digital goods using what is known as a “destination basis.” Under the Agreement, sourcing on a destination basis generally means that sales tax is computed based on the location where “receipt by the purchaser” occurs.

The Agreement provides a hierarchy of rules to determine the correct location to source a sale. The general rules that member states must adopt are described in Section 310 of the Agreement as follows:

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

- 1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.*
- 2. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.*
- 3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.*
- 4. When subsections (A)(1), (A)(2), and (A)(3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the*

address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

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

The Agreement also requires member states to adopt special sourcing rules applicable to:

- the lease or rental of tangible personal property;
- the lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not the qualify as transportation equipment;
- the retail sale, including lease or rental, of transportation equipment (e.g., locomotives, railroad cars, and shipping containers);
- direct mail; and,
- telecommunications services.

A third aspect of complying with the Agreement's sourcing rules is acceptance of a "Multiple Points of Use" exemption document developed by the Governing Board as described in Section 312 of the Agreement.⁵⁶

⁵⁶The rules for using the Multiple Points of Use exemption document are still under development.

Finally, complying with the Agreement requires a member state to adopt the Agreement's uniform definitions of the following terms for purposes of applying the sourcing rules:

- Receive and Receipt
- Air-to-Ground Radiotelephone service
- Call-by-call Basis
- Communications Channel
- Customer
- Customer Channel Termination Point
- End user
- Home service provider
- Mobile telecommunications service
- Place of primary use
- Post-paid calling service
- Prepaid calling service
- Private communication service
- Service address.

The sourcing rules are provided for in Sections 310 through 315 of the Agreement. Altogether, member states must certify that they are in compliance with 48 sourcing-related items found in the Certificate of Compliance.

New York's Current Law and Practice

New York's sales tax is a "destination tax." The point of delivery or point at which title or possession, or both, is transferred by the vendor to the purchaser, or the purchaser's designee, controls both the tax incidence and the tax rate.⁵⁷

New York applies special sourcing rules for certain products including motor vehicles and vessels. These products are taxed based on the purchaser's residence rather than the place of delivery.⁵⁸ The Department has also developed special guidance for individual industries including:

- florists selling flowers by wire (e.g., FTD),⁵⁹
- telephone answering services;⁶⁰
- printers and mailers,⁶¹ and
- the film industry.⁶²

⁵⁷See Tax Law Section 1101(b)(5) and 20 NYCRR Section 526.7.

⁵⁸See Tax Law Sections 1117 and 1214.

⁵⁹See 20 NYCRR Section 526(e)(3).

⁶⁰See TSB-M-91(13)S.

⁶¹See Publication 831, *Collection and Reporting Instructions for Printers and Mailers*.

⁶²See Publication 28, *A Guide to Sales Tax for the Film Industry*.

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New York's overall approach to sourcing (i.e., use of a destination basis) appears to be consistent with the Agreement. However, New York would not be able to document compliance with the Agreement's sourcing requirements as outlined in the 48 related items of the Certificate of Compliance. For example, New York's Tax Law does not contain all of the required definitions and does not contain the Agreement's hierarchy of sourcing rules.

Comments

Adopting the Agreement's sourcing rules represent an area where complying with the Agreement would have fiscal implications for the State and for its localities.

SSUTA Requirement: Enactment of Exemptions

A significant challenge facing multi-state sellers is to understand the unique exemptions of different states. For example, Connecticut, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont provide clothing exemptions. However, these states define or interpret the term “clothing” differently or otherwise place unique limitations on the exemption. In order to charge and collect the correct amount of tax, a retailer doing business in some or all of these states must take into account the different definitions.

An important simplification required by the Streamlined Agreement is the uniform definition of exempt products. When enacting exemptions, member states agree to abide by the uniform product definitions found in the Agreement. If the Agreement defines a product category (e.g., clothing), and a member state exempts that product category, it agrees to exempt the individual items included within that product category. For example, the Agreement’s definition for clothing includes shoe laces and formal wear. Therefore, a state exempting clothing must exempt these items. The Streamlined Governing Board is responsible for determining the specific items included within defined product categories.

The specific requirement of the Agreement is found in Section 316:

- A. *A member state may enact a product-based exemption⁶³ without restriction if the Agreement does not have a definition for the product or for a term that includes the product. If the Agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the Agreement sets out the exemption for part of the items as an acceptable variation.*

⁶³SSUTA Section 209 defines a “product based exemption” as “[a]n exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.”

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- B. *A member state may enact an entity-based or a use-based exemption⁶⁴ without restriction if the Agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the Agreement has a definition for the product whose use or specific purchase is exempt, a member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the Agreement definition of the product. If the Agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction.*
- C. *For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.⁶⁵*

Product definitions are listed in Appendix C of the Agreement. Table 3 lists the product definitions as of September 1, 2006.

⁶⁴An “entity-based exemption” is defined in SSUTA Section 204 as “[a]n exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.” A “use-based exemption” is defined in Section 214 as “[a]n exemption based on a specified use of the product by the purchaser.”

⁶⁵These provisions are in effect through December 31, 2007, at which time amended requirements will take effect.

Table 3. Streamlined Sales and Use Tax Agreement Product Definitions	
Product Definition	Placement in Agreement
Alcoholic beverages	Appendix C, Part II, within food and food products category
Ancillary services	Appendix C, Part II, within telecommunications category
Candy	Appendix C, Part II, within food and food products category
Clothing	Appendix C, Part II, within clothing category
Clothing accessories or equipment	Appendix C, Part II, within clothing category
Computer	Appendix C, Part II, within computer related category
Computer software	Appendix C, Part II, within computer related category
Coin-operated telephone service	Appendix C, Part II, within telecommunications category
Conference bridging service	Appendix C, Part II, within telecommunications category
Delivered electronically	Appendix C, Part II, within computer related category
Detailed telecommunications billing service	Appendix C, Part II, within telecommunications category
Dietary supplement	Appendix C, Part II, within food and food products category
Directory assistance	Appendix C, Part II, within telecommunications category
Drug	Appendix C, Part II, within health care category
Durable medical equipment	Appendix C, Part II, within health care category
800 service	Appendix C, Part II, within telecommunications category
Fixed wireless service	Appendix C, Part II, within telecommunications category
Food and food ingredients	Appendix C, Part II, within food and food products category
Food sold through vending machines	Appendix C, Part II, within food and food products category
Grooming and hygiene products	Appendix C, Part II, within health care category
International [telecommunications service]	Appendix C, Part II, within telecommunications category
Interstate [telecommunications service]	Appendix C, Part II, within telecommunications category
Intrastate [telecommunications service]	Appendix C, Part II, within telecommunications category
Load and leave	Appendix C, Part II, within computer related category
Mobile wireless service	Appendix C, Part II, within telecommunications category
Mobility enhancing equipment	Appendix C, Part II, within health care category
900 service	Appendix C, Part II, within telecommunications category
Over-the-counter drug	Appendix C, Part II, within health care category
Paging service	Appendix C, Part II, within telecommunications category
Pay telephone service	Appendix C, Part II, within telecommunications category
Prepaid calling service	Article III, Section 315 and Appendix C, Part II, within telecommunications category
Prepaid wireless calling service	Article III, Section 315 and Appendix C, Part II, within telecommunications category
Prepared food	Appendix C, Part II, within food and food products category
Prescription	Appendix C, Part II, within health care category
Prewritten computer software	Appendix C, Part II, within computer related category
Prosthetic device	Appendix C, Part II, within health care category
Protective equipment	Appendix C, Part II, within clothing category
Residential telecommunications service	Appendix C, Part II, within telecommunications category
Soft drinks	Appendix C, Part II, within food and food products category
Sport or recreational equipment	Appendix C, Part II, within clothing category
Telecommunications service	Appendix C, Part II, within telecommunications category
Tobacco	Appendix C, Part II, within food and food products category
Value-added non-voice data service	Appendix C, Part II, within telecommunications category
Vertical service	Appendix C, Part II, within telecommunications category
Voice mail service	Appendix C, Part II, within telecommunications category

To demonstrate compliance with the Streamlined Agreement, a state must:

- confirm that where the Agreement has a definition for a product or for a term that includes the product, if a state exempts a defined product, it exempts all items within each definition and does not tax only part of the items included within each definition; and
- confirm that in any entity-based or use-based exemption that includes a product that is defined by the Agreement, the exemption uses the Agreement's definition of the product.

*New York's Current Law
and Practice*

New York's sales tax provides numerous exemptions and exclusions. In some cases the law exempts broad categories of consumer products. Common examples include food, medicine, and clothing. These three broad product categories encompass scores of individual items. In other cases the law exempts a specific good or service (such as a used mobile home or cable television service) or specific product uses (such as machinery used in production).

The *Annual Report on New York State Tax Expenditures* describes 135 different sales tax exemptions and exclusions.⁶⁶ The parameters of these exemptions are set by the Legislature and implemented by the Department. Interpretations about how a particular exemption applies to a specific item (e.g., whether or not shoe laces qualify as a clothing item) are made by the Department and subject to review by the Division of Tax Appeals and the New York State court system.

⁶⁶The *Annual Report on New York State Tax Expenditures* is available at <http://www.budget.state.ny.us>.

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The Commissioner would not be able to demonstrate compliance with this requirement. By way of example, New York’s clothing exemption does not encompass rented formal wear— an item that is specifically defined as clothing by the Agreement. Moreover, New York’s definition of clothing includes items like cleated golf shoes — items that are not part of the Agreement’s definition of clothing.⁶⁷

The Department would also not be able to confirm that all current entity-based or use-based exemptions that include a product defined by the Agreement incorporate the Agreement’s definition of such product. For example, the Department could not confirm that New York’s exemption for computer system hardware used in designing and developing computer software for sale conforms to the Agreement’s definitions with respect to the terms “computer” and “computer software.”⁶⁸

Comments

It is the Streamlined project’s stated intent to provide states with definitions that can be used to closely mirror existing tax bases through the uniform definitions. However, it is noted that moving to the uniform definitions will change how individual items are treated in different states.⁶⁹ As additional products are defined, the State Legislature’s sales tax policy choices with respect to that product category are limited to that definition.

⁶⁷Cleated athletic shoes are within the Agreement’s definition of *sport or recreational equipment*. By the Agreement’s own terms, in order to exempt all cleated athletic shoes, a State would need to exempt *sport or recreational equipment*.

⁶⁸The exemption for computer system hardware is found in Tax Law Section 1115(a)(35).

⁶⁹Hardt, Diane and Doug Lindholm. *A Lawmaker’s Guide to the Streamlined Sales Tax Project*. The Deloitte & Touche Center for Multistate Taxation, 2002, page 6.

SSUTA Requirement: Exemption Administration

Exemption certificate policies vary from state to state. This represents another compliance burden for a multi-state seller. For example, an Internet-based business making sales nationally would likely be unfamiliar with other states' exemptions and exemption certificate requirements. Yet, if that seller was registered to collect tax in the states where it made sales, it would be required to abide by those states' policies.

To encourage remote sellers to collect tax, the Agreement requires member states to adopt a uniform exemption certificate (see Figure 2). The certificate covers entity and use-based exemptions and is available in both a paper and an electronic format. The Agreement also requires member states to adopt a uniform policy with respect to exemption certificates. In general, this policy relieves the seller of liability associated with an exempt sale as long as the seller receives a completed exemption certificate from the purchaser.

A member state's requirements for administration of exemptions are found in Section 317 of the Agreement.

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

- 1. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.*
- 2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.*
- 3. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.*

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4. *The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.*
 5. *A member state may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.*
 6. *The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.*
 7. *A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.⁷⁰*

B. Each member state shall relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.⁷¹

⁷⁰Direct pay permits are discussed in Section 326 of the Agreement. In summary, each member state must provide for direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit makes a determination of the taxability of the purchase and then report and pay the applicable tax due directly to the taxing authority. Each state can set its own limits and requirements for the direct pay permit.

⁷¹Additional provisions related to administration of exemptions will take effect on January 1, 2008.

Figure 2. Streamlined Uniform Exemption Certificate

Streamlined Sales and Use Tax Agreement

Certificate of Exemption

This is a multistate form. Not all states allow all exemptions listed on this form. Purchasers are responsible for knowing if they qualify to claim exemption from tax in the state that is due tax on this sale. The seller may be required to provide this exemption certificate (or the data elements required on the form) to a state that would otherwise be due tax on this sale.

The purchaser will be held liable for any tax and interest, as well as civil and criminal penalties imposed by the member state, if the purchaser is not eligible to claim this exemption. A seller may not accept a certificate of exemption for an entity-based exemption on a sale at a location operated by the seller within the designated state if the state does not allow such an entity-based exemption.

1 Check if you are attaching the Multistate Supplemental form.
 If not, enter the two-letter postal abbreviation for the state under whose laws you are claiming exemption.

2 Check if this certificate is for a single purchase and enter the related invoice/purchase order # _____

3 Please print

Name of purchaser _____

Business address _____ City _____ State _____ Zip code _____

Purchaser's tax ID number _____ State of issue _____ Country of issue _____

If an tax ID number, enter one of the following:	Estate's license number/State issued ID number	Foreign diplomat number
FEIN	number	
	state of issue	

Name of seller from whom you are purchasing, leasing or renting _____

Seller's address _____ City _____ State _____ Zip code _____

4 Type of business. Circle the number that describes your business.

01 Accommodation and food services	11 Transportation and warehousing
02 Agricultural, forestry, fishing, hunting	12 Utilities
03 Construction	13 Wholesale trade
04 Finance and insurance	14 Business services
05 Information, publishing and communications	15 Professional services
06 Manufacturing	16 Education and health care services
07 Mining	17 Nonprofit organization
08 Real estate	18 Government
09 Rental and leasing	19 Not a business
10 Retail trade	20 Other (explain) _____

5 Reason for exemption. Circle the letter that identifies the reason for the exemption.

A Federal government (department) _____	H Agricultural production # _____
B State or local government (name) _____	I Industrial production/manufacturing # _____
C Tribal government (name) _____	J Direct pay permit # _____
D Foreign diplomat # _____	K Multiple points of use (services, digital goods, or computer software delivered electronically) _____
E Charitable organization # _____	L Direct mail # _____
F Religious or educational organization # _____	M Other (explain) _____
G Resale # _____	

6 Sign here. I declare that the information on this certificate is correct and complete to the best of my knowledge and belief.

Signature of authorized purchaser _____	Print name here _____	Title _____	Date _____
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(Rev. 1/2021)

New York's Current Law and Practice

In New York, good faith acceptance of a properly completed exemption certificate within 90 days of the sale relieves the vendor of the responsibility for collecting tax. The Tax Law requires the exemption certificate to be signed by the purchaser and to set forth the purchaser's name and address and, except as otherwise provided by regulation, the number of the purchaser's *Certificate of Authority*.⁷²

New York Tax Law also authorizes a direct pay permit to allow a business to purchase otherwise taxable goods and services without paying tax at the time of the purchase.⁷³

⁷²See Tax Law Section 1132(c)(1).

⁷³See Tax Law Section 1132(c)(2).

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New York could not document compliance with the exemption certificate requirements of the Streamlined Agreement. To participate in the Agreement as a member state, New York would need to accept the uniform exemption certificate.

Comments

As of this writing, the Streamlined Governing Board continues to modify the Streamlined uniform exemption certificate and the policies governing its use. Member states must conform to such changes.

SSUTA Requirement: Tax Return Administration

Each state has unique sales tax returns. Filing frequencies and deadlines also differ from state to state. Some states require sellers to file a state return separate from local returns. For multi-state sellers, the various tax return requirements yield administrative complexity and multiple deadlines for the filing of returns. A remote seller is only required to file sales tax returns in states in which it has nexus. The cost associated with filing returns in numerous states presents a significant barrier to voluntary sales tax registration and compliance.

The Streamlined Agreement mandates that states can only require sellers to file one sales tax return per member state per reporting period. That return must cover both state taxes and any local taxes imposed in that state. In other words, under the Agreement, a state cannot require businesses to file one return for a state sales tax and an additional return or returns for local sales taxes. In addition, sellers must be allowed at least 20 days from the close of the month in which the transaction occurs to file a return.

Finally, member states agree to utilize a uniform simplified electronic return that Model 1, 2 or 3 sellers may choose to file in lieu of a state's standard return.⁷⁴ Certified Service Providers will also use this simplified electronic return when reporting the sales tax of its customers.⁷⁵

⁷⁴Model 1, 2, and 3 sellers are those that use the technology models specified in the SSUTA to perform some or all of the seller's sales tax functions. The SSUTA technology models are explained later in this section.

⁷⁵The specifications of the uniform simplified electronic return were developed by the Tax Information Group for Ecommerce Requirements Standardization (TIGERS). TIGERS was formed in October 1994 by the Federation of Tax Administrators, the states, the IRS, and business and service provider representatives, initially to provide an overall coordinative body for advice and counsel on government technical implementation of American National Standards Institute (ANSI)-based tax-related electronic data interchange applications.

These provisions, found in Section 318 of the Agreement state:

Each member state shall:

A. Require that only one tax return for each taxing period for each seller be filed for the member state and all the taxing jurisdictions within the member state.

B. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.

D. Allow any seller that is registered under the Agreement, which does not have a legal requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit its sales and use tax returns as follows:

- 1. Upon registration, a member state shall provide to the seller the returns required by that state.*
- 2. A member state may require a seller to file a return anytime within one year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.*
- 3. In addition to the returns required in subsection (D)(2), a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.*

E. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.

F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004.

Other related requirements include uniform rules for the remittance of funds, uniform rules for the recovery of bad debts, and uniform customer refund provisions.⁷⁶

*New York's Current Law
and Practice*

Generally, sales tax vendors file quarterly tax returns with the Department. These returns are due by the 20th day of the month following the end of the quarter. Also, vendors whose taxable receipts total \$300,000 or more in any quarter must file monthly returns by the 20th day of the following month. Vendors who remit tax of \$3,000 or less per year may file an annual return. Sales tax vendors with an annual sales and use tax liability exceeding \$500,000 or with an annual liability for prepaid sales tax on motor fuel and diesel motor fuel exceeding \$5 million are required to participate in the Department's electronic funds transfer (EFT) program, known as "PrompTax." Other vendors may request to participate in the PrompTax program on a voluntary basis.⁷⁷

The sales tax returns encompass State and local sales taxes and certain other taxes. Most sales tax returns are filed in a paper format. However, over 30,000 vendors utilize a touch-tone telephone system to file returns.⁷⁸ In addition, an e-File program is available to PrompTax sales tax participants for their returns.⁷⁹

New York has various rules for the remittance of funds, provides procedures for the recovery of bad debts and allows purchasers to apply to the Department for a refund of over collected or erroneously paid tax.

⁷⁶These requirements are found in SSUTA Sections 319, 320, and 325, respectively.

⁷⁷Most sales tax return requirements are found in Tax Law Section 1136. The requirements for electronic funds transfer are found in Tax Law Section 10.

⁷⁸Qualified vendors can use this system if they have no tax due for a particular filing period.

⁷⁹This secure service is restricted to authorized users that have a Department-supplied Access Code Number and password. Security is ensured through Secured Socket Layer (SSL) protection that encrypts transferred information.

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New York could document compliance with the Agreement's requirement for one tax return for each taxing period for each seller for the state and all local jurisdictions. New York could also document compliance with the requirement that returns be filed no sooner than the 20th day of the month following the month in which the transaction occurred.

With respect to the requirements for an electronic simplified electronic return, upon application for membership in the Agreement, the State would need to document its ability to participate in the Streamlined system. This would be a new type of filing system that would require administrative and technological changes to accommodate.

Concerning the requirements associated with the remittance of funds, bad debts, and customer refund procedures, the State would need to adopt the Streamlined provisions. New York's current rules are not in substantial compliance with the Agreement.

Comments

The remaining changes are more or less technical or administrative in nature. Nevertheless, they would have significant implications in terms of the costs and time associated with adopting the related technology and procedures.

SSUTA Requirement: Sales Tax Holidays

Sales tax holidays are temporary sales tax exemptions for certain products for a specific period of time. The Agreement allows for sales tax holidays, but imposes certain restrictions. Section 322 of the Agreement states, in part:

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

- 1. Not apply an exemption unless the items to be exempted are specifically defined in the Agreement and the exemptions are uniformly applied to 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.

Section 322 also includes administrative procedures that must be used during sales tax holidays. These provisions relate to:

- layaway sales;
- bundled sales;
- coupons and discounts;
- splitting of items normally sold together;
- rain checks;
- exchanges;
- delivery charges;
- order dates and back orders;
- returns; and
- time zones.

Certain definitions that apply only to sales tax holidays are found in SSUTA Appendix C, Part III:

- eligible property;
- layaway sale;
- rain check;
- school supply;
- school art supply;
- school instructional material; and
- school computer supply.

New York's Current Law and Practice

No sales tax holidays are scheduled under current law. However, New York has held a number of sales tax holidays for clothing and footwear items in the recent past. The latest holiday exempted clothing and footwear priced under \$110 from January 30, 2006, through February 5, 2006, from State sales tax. Localities imposing sales tax had the option of also waiving their locally-imposed sales taxes on these items during the temporary exemption period.

In addition, a series of three temporary sales tax exemptions for most goods and services priced under \$500 were held in June, July, and August of 2002 in the Liberty Zone and Resurgence Zone in Lower Manhattan.⁸⁰

Evaluation of Compliance with the Streamlined Requirement

New York State does not presently offer any sales tax holidays. However, legislation was advanced in 2006 to enact sales tax exemption holidays for particular goods. As drafted, these proposals did not comply with the definitions and procedures required by the Agreement.

Comments

Although the Tax Law does not currently provide for any sales tax holidays, compliance with the Agreement's requirement that a holiday must uniformly apply to both state and local taxes would dictate that the practice of allowing counties and cities the option to participate in temporary exemptions must end.

Past New York temporary exemptions were generally consistent with the administrative procedures required by Section 322.

It should also be noted that any future sales tax holidays may only be for products defined in the Agreement.

⁸⁰See TSB-M-02(2)S for a description of the exemption authorized by Tax Law Section 1115-A (repealed).

SSUTA Requirement: Caps and Thresholds

The *Lawmaker's Guide to the Streamlined Sales Tax Project* describes rate caps as limits on the rate that can be applied when determining the tax amount.⁸¹ Dollar caps are limits on the amount of tax charged on a purchase. Thresholds are limits placed on an exemption, such as New York's clothing exemption threshold of \$110. The elimination of caps and thresholds would promote sales tax simplicity and remove a compliance burden on retailers.

Section 323 of the Agreement contains certain limitations on the use of caps and thresholds:

A. Each member state shall:

- 1. Not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item....*
- 2. Not have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.*

B. Each member state that has local jurisdictions that levy a sales or use tax shall not place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item.

C. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances where the burden of administration has been shifted from the retailer.

⁸¹Hardt, Diane and Doug Lindholm. *A Lawmaker's Guide to the Streamlined Sales Tax Project*. The Deloitte & Touche Center for Multistate Taxation, 2002, page 13.

*New York's Current Law
and Practice*

New York does not impose the rate or dollar caps that would be restricted by the Agreement. However, an assortment of thresholds apply to existing sales tax provisions. These include exemptions or exclusions for:

- clothing and footwear items priced under \$110;
- coin-operated telephone services where the charges are 25 cents or less;
- social or athletic club dues below \$10 per year;
- hotel room rent of \$2 or less per day;
- admission charges of 10 cents or less;
- precious metal bullion sold for investment for more than \$1,000;
- tangible personal property sold at a person's residence where the receipts are not expected to exceed \$600 per year (e.g., garage sales);
- 75 percent of the admission charge to a qualified place of amusement; and
- race horses purchased through claiming races (partial exemption).

*Evaluation of Compliance
with the Streamlined
Requirement*

New York could not document compliance with the Agreement's requirement to eliminate caps and thresholds. The use of thresholds in exemptions such as the exemption for clothing priced below \$110 and hotel rooms priced below \$2 would disqualify New York from compliance with this requirement.

Comments

Compliance with the Agreement would mandate that the above exemption thresholds be addressed. It appears that the "garage sale" exemption would not be out of compliance because it is not based on the value of the transaction or item, but on the seller's total annual sales.

SSUTA Requirement: Rounding Rule

States use different methods to determine the proper amount of tax due on a sale when the calculated tax amount includes a fraction of one cent. This has wide-ranging implications for multi-state business from programming of cash register and computer systems to employee training.

To promote uniformity across states for multi-state businesses, Section 324 of the Agreement requires that each member state employ the same rounding algorithm:

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

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

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

New York's Current Law and Practice

A regulation adopted in 2001 replaced New York's bracket schedules for rounding the amount of tax to be paid with a standard rounding methodology.⁸²

Evaluation of Compliance with the Streamlined Requirement

New York could document that it is compliant with the Agreement's rounding rules.

Comments

New York's existing rounding rule would appear to yield results consistent with the SSUTA's rounding algorithm.

⁸²See 20 NYCRR Section 530.4.

SSUTA Requirement: Library of Definitions

The Streamlined project relies on increased use of computer software and other technology applications to simplify the collection and reporting of sales tax for multi-state sellers. Key to a usable technological solution is for member states to adopt uniform sales tax terminology. For instance, it is of little help to know how different states treat “delivery charges” for sales tax purposes if each of those states has a unique definition and interpretation of that term.

SSUTA Section 316 (described above in Enactment of Exemptions) and Section 327 together provide the structure by which member states must utilize the terms defined in the Agreement’s Library of Definitions. Specifically, Section 327 promotes uniformity by requiring that, if a member state uses a term in its tax law or regulations that is defined in the Library of Definitions, then the member state must adopt the Library definition. Moreover, the member state must integrate the Agreement’s meaning of the term into its own tax law or regulations.

Section 327 of the Agreement requires that:

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

A. If a term defined in the Library of Definitions appears in a member state’s sales and use tax statutes or administrative rules or regulations, the member state shall enact or adopt the Library definition of the term in its statutes or administrative rules or regulations in substantially the same language as the Library definition.

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

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

The Library of Definitions contains 64 definitions for states to incorporate into their statutes as needed. They are summarized in the Agreement as follows:

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.

Examples of administrative definitions include:

- bundled transaction;
- delivery charges;
- retail sale; and
- tangible personal property.

Product definitions include, for example:

- clothing;
- computer;
- prewritten computer software;
- prepared food;
- drug;
- durable medical equipment; and
- telecommunications service.

Certain definitions apply only with respect to sales tax holidays, such as:

- layaway sale;
- rain check; and
- school supply.

New York's Current Law and Practice

New York's Tax Law contains numerous definitions for purposes of sales tax imposition, exemption or exclusion, and administration. There are no constraints on the State Legislature's capacity to structure definitions as it desires.

Evaluation of Compliance with the Streamlined Requirement

Under current law, New York would not be able to confirm that the definitions used in the sales tax law conform to the definitions listed in the Library of Definitions or that existing New York definitions have similar meanings as SSUTA definitions.

Comments

There are numerous definitions in New York sales tax law. In many cases, these terms intersect with the definitions and their meanings in the Agreement's Library of Definitions.

One of the most basic consequences of documenting that New York's sales tax definitions comply with the Streamlined Agreement is that the taxability of specific products would change. Moreover, adopting the administrative definitions would introduce different concepts into the terms that make up the foundation of the sales tax. Table 4 lists the 64 terms contained in the Library of Definitions and 28 other terms defined in the SSUTA.

**Table 4.
Streamlined Sales and Use Tax Agreement**

Library of Definitions Part I – Administrative Definitions	
Bundled transaction Delivery charges Direct mail Lease Purchase price Rental	Retail sale Sale at retail Sales price Tangible personal property Telecommunications nonrecurring charges
Library of Definitions Part II – Product Definitions	
Alcoholic beverages Ancillary services Candy Clothing Clothing accessories or equipment Computer Computer software Coin-operated telephone service Conference bridging service Delivered electronically Detailed telecommunications billing service Dietary supplement Directory assistance Drug Durable medical equipment 800 service Electronic Fixed wireless service Food and food ingredients Food sold through vending machines Grooming and hygiene products International Interstate	Intrastate Load and leave Mobile wireless service Mobility enhancing equipment 900 service Over-the-counter drug Paging service Pay telephone service Prepaid calling service Prepaid wireless calling service Prepared food Prescription Prewritten computer software Prosthetic device Protective equipment Residential telecommunications service Soft drinks Sport or recreational equipment Telecommunications service Tobacco Value-added non-voice data service Vertical service Voice mail service
Library of Definitions Part III – Sales Tax Holiday Definitions	
Eligible property Layaway sale Rain check School art supply	School computer supply School instructional material School supply
Other Terms Defined in the Agreement	
Agent Air-to-ground radiotelephone service Call-by-call basis Certified automated system Certified service provider Communications channel Confidential taxpayer information Customer Customer channel termination point Entity-based exemption Home service provider Mobile telecommunications service Model 1 Seller Model 2 Seller	Model 3 Seller Person Place of primary use Post-paid calling service Private communication service Product-based exemption Purchaser Receive and receipt Registered under this agreement Seller Service address State Transportation equipment Use-based exemption

SSUTA Requirement: Taxability Matrix

Each member state must complete a taxability matrix specifying its tax treatment of each of the administrative and product definitions in the SSUTA's Library of Definitions.

A seller or Certified Service Provider that relies on the information in the matrix is relieved from liability for incorrectly collecting tax resulting from erroneous information provided in the matrix by the member state.

The requirement for the taxability matrix is found in Section 328:

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

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

New York's Current Law and Practice

New York does not produce a chart noting the taxability of goods and services defined in the Tax Law similar to the taxability matrix. Nor does New York necessarily relieve businesses of liability for collecting an incorrect amount of sales tax if it relied on erroneous information promulgated by the Tax Department. New York's Taxpayer Bill of Rights provides that penalties and excess interest shall be abated in cases where an officer or employee of the Department provides erroneous written advice to a taxpayer. However, the taxpayer would remain liable for any tax due plus statutory interest.⁸³

⁸³See Tax Law Section 3008(b).

*Evaluation of Compliance
with the Streamlined
Requirement*

New York would not be able to document compliance with the Agreement's requirements with respect to the taxability matrix. This type of document would need to be developed as part of the process of applying for Streamlined membership.

Comments

The taxability matrix summarizes whether a member state taxes or exempts products defined in the Agreement, such as clothing, food, prepared food, candy, soft drinks, durable medical equipment, and computer software. Accurate tax compliance will require that each individual item is correctly classified by the seller or its agent into the appropriate category in the matrix. For example, the proper amount of tax will not be collected if a chocolate bar is coded into a seller's point-of-sale system as exempt food if it is actually a taxable candy item.

SSUTA Requirement: Effective Dates for Rate Changes

Many of the Agreement's provisions are intended to promote uniformity in state and local tax rate impositions.

Section 329 of the SSUTA prescribes transitional rules for service contracts that cover a period which overlaps the effective date of a tax rate change:

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

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

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

New York's Current Law and Practice

In general, rate changes are effective for services rendered on or after the effective date, regardless of when billed or paid.

Evaluation of Compliance with the Streamlined Requirement

New York would not be able to document compliance with the Agreement's Section 329 requirements for the effective dates for rate changes. This is because New York's current transitional rules for rate changes generally relate to the date that a service was provided. The Agreement's criteria relate to the date on which a bill for the taxable service is issued.

Comments

Compliance with the Agreement would require the adoption of the Agreement's transitional provisions for effective dates of rate changes for services.

SSUTA Requirement: Tax Amnesty

As discussed earlier in this report, a state cannot require a remote seller to collect or pay its sales tax unless the seller has nexus with the state. Consequently, at this point in time, the Streamlined system is voluntary. However, as an incentive to participate, sellers that voluntarily register under the Agreement to collect tax for the member states are eligible for amnesty from uncollected or unpaid sales or use tax. After becoming a Streamlined member, states agree to offer the amnesty for at least 12 months.

Section 402 of the Agreement describes the amnesty and its limitations:

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

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

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

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

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

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

*New York's Current Law
and Practice*

New York does not currently offer a broad-based sales tax amnesty. The Department is authorized to enter into voluntary disclosure agreements with businesses that have a past liability and prospectively register to collect tax.

*Evaluation of Compliance
with the Streamlined
Requirement*

New York would not be able to document compliance with the Agreement's requirement that member states provide amnesty to voluntary sellers. A tax amnesty program would need to be part of legislation authorizing membership in the Agreement.

Comments

The amnesty period is offered as an incentive for businesses to voluntarily register with the central registration system as streamlined sellers. Businesses with "gray area" nexus where it is not clear if their activities have created nexus with a member state may benefit from this provision.

SSUTA Requirement: Provisions for Technology Models- Tax Calculation and Remittance

The use of technology to reduce or eliminate the burden on businesses of collecting sales tax is a central theme of the streamlined sales tax effort.

Member states agree to make three new technology models available to sellers that register under the Agreement. Section 403 of the SSUTA describes these models:

- A. *MODEL 1, wherein a seller selects a Certified Service Provider (CSP) as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.*
- B. *MODEL 2, wherein a seller selects a Certified Automated System (CAS) to use which calculates the amount of tax due on a transaction.*
- C. *MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.*

The Governing Board has the authority to certify persons as CSPs provided that they meet the following criteria (SSUTA Section 501):

- 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.*

The Certified Automated System (CAS) is a software program that:

- *Determines the applicable state and local sales and use tax rate accordance with Sections 309 to 315, inclusive;*
- *Determines whether or not an item is exempt from tax;*
- *Determines the amount of tax to be remitted for each taxpayer period;*
- *Generates reports and returns as required by the governing board; and*
- *Can meet any other requirement set by the governing board.*

Businesses registering to collect tax for the member states select one of these models or continue with their current practices for calculating and remitting sales tax. Businesses that do not register under the streamlined system have no obligation to collect tax for any member state in which they have no nexus.

New York's Current Law and Practice

State law does not currently accommodate any of the technology models contained in the SSUTA. Several companies market software that may assist a business with fulfilling its sales tax obligations, but these programs are not certified by the State.

Evaluation of Compliance with the Streamlined Requirement

New York would not be able to document compliance with the Agreement's requirement that sellers may select a certified technology model. However, the legislation enacted to make New York a Streamlined Sales Tax Implementing State in 2003 contains piecemeal provisions related to liability relief for sellers that use a CSP as their tax collection agent.⁸⁴

Comments

Sellers that select Model 1 outsource their sales tax responsibilities to the CSP. The CSP is liable for any sales tax due on sales it processes and for which tax has been remitted to it by the seller. Thus, in the absence of a reasonable suspicion of fraud by the Model 1 seller, states would be limited to auditing the CSP to determine any tax due. This would provide significant benefits to large multi-state retail businesses using a CSP. Under current law, retailers are not only liable for the sales tax as a business entity, but the responsible officers of the business are jointly and severally liable for the tax. Furthermore, the costs of

⁸⁴See Tax Law Section 1178.

complying with the tax are borne by the business. Retailers are subject to audit by every state in which they do business. Under the Agreement, a retailer which signed up with a CSP would be freed from such liability, the existing business costs of tax compliance, and the audits.⁸⁵

A tax compliance problem arises when vendors fail to record a sale (e.g., the sale is never “rung up” through the register) or inappropriately record a taxable retail sale as an exempt sale (e.g., the sale is entered as a sale for resale). In order to detect such noncompliance, state auditors need to carefully observe a business and examine its books and records. However, Model 1 sellers cannot be audited for sales tax liabilities unless there is a reasonable suspicion of fraud.

Finally, notwithstanding the confidentiality and privacy protections provided by Section 321 of the Agreement, authorizing and requiring private companies (CSPs) to collect data on each sales transaction processed by their system has raised privacy concerns.

⁸⁵However, such sellers may still be audited by states for use tax liabilities.

SSUTA Requirement: Provisions for Technology Models- Monetary Allowances

Member states of the SSUTA agree to compensate Certified Service Providers for some portion of the costs of their services to Model 1 sellers as determined by the Governing Board. The agreement to compensate Certified Service Providers is explained by SSUTA Section 601:

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.*

The SSUTA provides that sellers opting to use a Certified Automated System (Model 2) may receive a monetary allowance for up to two years after they register under the Agreement. Section 602 notes that:

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 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.*
- 2. Following the conclusion of the twenty-four month period, a seller will only be entitled to a vendor discount afforded under each member state's law at the time the base rate expires.*

Additional provisions in SSUTA Section 603 relate to Model 3 sellers and those that register with the member states as a voluntary seller but do not opt to use one of the SSUTA's technology models:

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

A. 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.

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

New York's Current Law and Practice

Vendors who timely file their sales tax return and remit full payment of tax due with the return are entitled to claim a vendor collection credit equal to 5 percent of the tax remitted. The maximum credit is \$175 each quarter. The 2006-07 enacted budget increases the cap to \$200 per quarter effective March 1, 2007.

Evaluation of Compliance with the Streamlined Requirement

New York would not be able to document compliance with the Agreement's requirements to provide monetary allowances under the three technology models. Conforming legislation would need to include authorization for the payment of compensation per the terms of the contract between the Governing Board and the Certified Service Providers.

Comments

The SSUTA does not contain specific monetary allowances for CSPs or sellers, but grants a broad authority to the Governing Board to determine actual compensation. After prolonged contract negotiations, the Executive Committee of the Governing Board in March 2006 recommended that contracts with CSPs (i.e., Model 1) for the 2006-2008 contract term be based on total tax remitted in all member states at the following rates:

Tax Remitted per Seller for all States	Rates
≤ \$250,000	8.0%
> \$250,000 and ≤ \$1,000,000	7.0%
> \$1,000,000 and ≤ \$2,500,000	6.0%
> \$2,500,000 and ≤ \$5,000,000	5.0%
> \$5,000,000 and ≤ \$10,000,000	4.0%
> \$10,000,000 and ≤ \$25,000,000	3.0%
> \$25,000,000	2.0%

Importantly, the recommendation provides monetary allowances only to "voluntary sellers" as defined in the contract. For example, CSPs would not be compensated pursuant to the above scale for tax collected for sellers that had a store located in a state and that were already registered to collect sales tax. This eliminates an incentive for CSPs to service businesses that make mostly in-state sales, and effectively makes Model 1 only viable for remote (i.e., non-nexus mail order and e-commerce) sellers. However, member states are able to offer additional compensation to CSPs as they see fit.

Policy Considerations for New York

Unlike the legislation enacted in 2003 to make New York an Implementing State and an official participant in the Streamlined Sales Tax Project, becoming a member state of the Streamlined Agreement does not merely entail passing a law to enact model legislation drafted by the project. Instead, the process involves enacting discrete changes to align the sales tax with each of the standards for sales tax imposition and exemption contained in the Agreement and incorporating specific practices into the tax administration process.

As illustrated by the previous section, New York's current State and local sales tax does not comply with a large number of the Agreement's provisions. A broad-based revision of the Tax Law would be needed before New York could document compliance with the Agreement. Even so, documenting compliance is only the first step towards a commitment to being a Streamlined member state. Compliant states must keep their taxes in conformity with the Agreement in perpetuity so that the integrity of the nationwide sales tax uniformity is maintained.

Making the changes to adopt the Agreement's provisions clearly limits how a member state may structure its state and local sales tax. These implications filter down to the retailers required to collect the tax on behalf of the state and its localities. Even businesses such as manufacturers that do not ordinarily make taxable sales, but often claim exemptions from tax on their purchases (e.g., by issuing a resale exemption certificate) or have use tax liabilities (e.g., owe use tax on items purchased out-of-state without payment of sales tax) would be affected by the Streamlined sales tax.

Bringing the New York Sales Tax Into Compliance

A fair number of the SSUTA requirements involve accommodation of new procedures and technologies. Examples include participation in the online registration system, enactment of a tax amnesty for voluntary sellers, and development of rate and ZIP code databases. New York would have no alternative but to add these requirements into the sales tax precisely as the Agreement requires.

Other requirements limit how member states may structure their sales tax impositions and exemptions. Provisions including using a single state tax rate, eliminating caps and thresholds, and maintaining a uniform state and local tax base fall into this category. Because the Agreement generally does not dictate what products a state must tax or at what rate, New York policymakers would be faced with various decisions for shaping existing instances of tax base and rate nonconformity into impositions that are in conformity with the SSUTA.

These decisions could be based on specific tax policy objectives. For example, decisions that strictly align the State and local sales taxes with the Agreement's provisions limiting the number of tax rates, eliminating local options, and repealing exemption thresholds would advance the goal of simplification of the New York sales tax base. Conversely, decisions intended to work around the Agreement's limitations on the structure of the state's tax base and rates by enacting "replacement taxes" to maintain the status quo would make tax compliance significantly more complex. Various approaches between these two extremes could also be pursued if the policy or revenue impact of a given Tax Law change is unacceptable to State policymakers.

Consider the year-round State sales tax exemption for clothing and footwear priced under \$110, with local option. Section 323 of the Agreement prohibits states from using exemption thresholds. SSUTA Section 302 requires state and local tax bases to be identical (i.e., no local options). Policymakers would be faced with a variety of choices to achieve conformity in the clothing exemption. Eliminating the \$110 threshold would entail exempting all clothing and footwear, or repealing the exemption and taxing all clothing and footwear. Still another approach to conform the exemption would be to replace the year-round exemption with a series of sales tax holidays. If a year-round exemption is kept, there would not be a choice but to require localities to participate in the clothing exemption.

However, policymakers could choose to minimize local revenue losses by reimbursing localities for lost revenues (over \$700 million per year).

Policymakers would face decisions about approaches to conformity for numerous other significant aspects of the sales tax. Examples include:

- A non-conforming New York City tax imposition on fuels used to produce electricity, gas and other utilities. Complying with the SSUTA requirement for uniform state and local tax bases would entail repealing this NYC tax (which raises over \$30 million per year for the benefit of the Municipal Assistance Corporation), or imposing the tax statewide.
- Non-conforming additional tax rates on parking services in New York City. Policymakers could opt to repeal the additional rates, or create a new parking tax outside the scope of the New York City sales tax.
- Non-conforming local options for the Qualified Empire Zone Enterprise (QEZE) sales tax exemption. Ensuring a uniform state and local tax base would entail repealing the QEZE exemption or requiring all localities to offer the exemption. Additional options include repealing the exemption but providing for a direct refund of a portion of the tax collected; providing a full exemption while requiring a self-assessment of the local option tax; or, repealing the exemption but providing offsetting corporate income tax credits. If localities are required to offer the QEZE exemption, they could be reimbursed by the State for forgone revenues (approximately \$60 million annually).
- Non-conforming local sales taxes. For example, the City of Niagara Falls has opted to impose its 3 percent local sales tax on only hotel occupancy, restaurant and other meals, admissions, and utility services. The Streamlined Agreement does not permit this level of local autonomy. Conformity

would require the City of Niagara Falls (and three other cities imposing similar taxes) to repeal its tax. Once repealed, city policymakers would need to decide whether to impose a new citywide sales tax on the entire State sales tax base, to renegotiate its revenue sharing agreements with the county government, or to raise other taxes to offset the revenue differential.

Hundreds of choices like this would be faced to address the areas of nonconformity listed in the previous section and other required changes.

Maintaining Compliance

When completing the Streamlined Certificate of Compliance, a state's chief revenue officer attests that, at the time of its petition for membership, the state substantially complies with each of the requirements in the Agreement.⁸⁶ Legislative action, administrative interpretations, and judicial decisions continually alter member states' sales taxes. To prevent such changes from compromising the uniformity promoted by the Agreement, each member state must annually re-certify to the Governing Board that it has maintained compliance with the SSUTA. The re-certification considers any changes in statutes, rules, regulations, or other policies that could affect its compliance with the terms of the Agreement.⁸⁷ A member state found to be out of compliance with the Agreement may be sanctioned by the Governing Board or expelled from the SSUTA.⁸⁸

Member states implicitly accept certain concessions in order to affirmatively certify to the Agreement's Governing Board that they have maintained compliance with the terms of the compact. New York's policymakers should take this into consideration when evaluating the potential benefits and disadvantages of Streamlined membership.

First, any legislation enacted could not violate the requirements that New York accepts in order to become a member state of the Agreement. Specific implications include the following examples:

⁸⁶A three-fourths vote of the Governing Board is required to approve the state's petition for membership (SSUTA Section 804). Once a petitioning state is admitted to the Agreement, it is entitled to appoint up to four representatives to the Governing Board, on which it has one vote (SSUTA Section 806).

⁸⁷Section 803 of the Agreement.

⁸⁸Section 809 of the Agreement .

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- New sales tax exemptions must follow the rules in Section 316 and not be inconsistent with the 64 terms defined in the Library of Definitions (see Table 4). Items falling under the product definitions in the Agreement cannot be exempted unless all items included in a definition are exempted. For example, if policymakers desired to create a product-based exemption for safety glasses and goggles, they could not do so without exempting all “sport or recreational equipment,” as defined in the SSUTA.⁸⁹
 - Sales tax holidays may only exempt items for which there is a definition in the Agreement. The Agreement does not currently define “Energy Star appliances.” If a temporary exemption for these products is desired by New York policymakers,⁹⁰ a definition of such products must be developed by the State and Local Advisory Council (with input from the Business Advisory Council) and the Governing Board must approve the addition of such definition to the SSUTA.⁹¹
 - Local tax rate changes must be made only on the first day of a calendar quarter with a minimum of 60 days’ notice to sellers and 120 days’ notice to catalog sellers.⁹² Recent rate increases in Erie County and New York City, among others, were made on very short notice to accommodate local budgetary needs.

The Agreement is not a static document. To date, there have been seven sets of amendments to the Agreement since its adoption in November 2002. Legislative action would be required to amend the New York Tax Law to adopt new definitions or procedures added to the Agreement. By way of example, some members of the business community have proposed adding a uniform definition of “sale for resale” to the Agreement.⁹³ If this definition is incorporated into the SSUTA after New York became a member state, New York legislators would be forced to adopt the definition in the Tax Law to remain in substantial compliance.

⁸⁹Additional items defined as “sport and recreational equipment” include roller and ice skates, life preservers, ski boots, and wetsuits. SSUTA Library of Definitions, Part II.

⁹⁰Sales tax holidays for certain Energy Star products were proposed in the 2006-07 Executive Budget and by the New York State Senate in 2006.

⁹¹SSUTA Section 903 explains procedures for definition requests.

⁹²SSUTA Section 305.

⁹³A November 2005 memorandum from the business community to the SLAC discussing this and other purchaser use tax issues is available at <http://www.streamlinedsalestax.org/meetingsmaterials.html>

Finally, legislative, regulatory or administrative action would be required to bring New York's sales tax into compliance with any interpretations of the Agreement promulgated by the SSUTA Governing Board.⁹⁴ For example, the Governing Board recently adopted a request by the Food Marketing Institute for an interpretation of the term "prepared food."⁹⁵ As a member state, New York would need to align its interpretations of this term with the decision of the Governing Board or be out of compliance with the Agreement.

Impact on New York's Businesses

The Agreement's stated purpose is "to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance."⁹⁶ Retailers collecting and remitting sales tax on behalf of most, or all, states would benefit from uniform definitions of sales tax terms and products, reduced compliance costs, lower audit risks, and easier programming of cash registers and computer systems.

Because of its nationwide emphasis, discussions surrounding the streamlining effort tend to focus on large multi-state businesses and remote sellers. However, the required statutory and administrative changes would not only affect large multi-state retailers. Should New York become a member state, all types of New York businesses would be impacted, including locally owned and operated businesses like retailers, restaurants, bakeries, farmers, hotels, florists, and gas stations. Service providers such as auto repair shops, caterers, carpenters, painters, and contractors would be also affected. The Streamlined provisions would also modify sales taxes for regional businesses including wholesalers, manufacturers, pharmacies, convenience stores, and auto dealers. Many of these businesses are not involved with Internet or mail-order selling. In fact, roughly one-half of New York's registered vendors sell goods and services in only a limited number of New York sales tax jurisdictions.⁹⁷

⁹⁴SSUTA Section 902 provides, in part, that interpretations made by the Governing Board "shall be considered part of the Agreement and shall have the same effect as the Agreement."

⁹⁵SSUTA Library of Definitions, Part II.

⁹⁶SSUTA Section 103.

⁹⁷In New York about 300,000 of the approximately 600,000 registered vendors file a simplified "limited jurisdiction" tax return because they only do business in one or two local jurisdictions in the State.

The experience of some of the current member states illustrates the impact Streamlined conformity has had on in-state businesses. Adopting the Agreement's provisions required Kansas to change from origin-based sourcing to destination-based sourcing. Local businesses opposed this change since it required them to charge tax based on the rates in effect in each taxing jurisdiction where they made sales instead of collecting tax based only on the location of their business.⁹⁸ Likewise, the Project has heard testimony from industry associations representing florists and local grocers who expressed concern over how the proposal impacts their businesses. Local convenience stores in one state were dumbfounded by the Agreement's required changes in the definition of candy,⁹⁹ holding up a 3 Musketeers bar (a food item) and a Snickers bar (a candy item) as examples of the new procedures their clerks needed to learn. At a recent Rhode Island House Finance Committee hearing about whether that state should become a Streamlined member, it was reported that lawmakers spent more time discussing bagels and olives than Internet-related issues. The hearing pointed out how the taxation of bagels, cannoli, and olives would change due to "the ripple effects of implementing the Agreement."¹⁰⁰ In Ohio, Tennessee, and Utah the new compliance burdens imposed on local businesses resulted in delay or repeal of parts of the legislation that conformed those states to the Agreement.¹⁰¹

The Streamlined Agreement's impact on New York's businesses would depend to a great extent on the choices made by New York's policymakers to achieve compliance. For example, if compliance is achieved via a radical simplification of New York's sales tax, the results could benefit New York's retail community. However, if compliance is achieved through a variety of incremental changes coupled with new replacement taxes the result would yield increased complexity and additional costs.¹⁰²

⁹⁸There are more than 750 different sales tax jurisdictions in Kansas.

⁹⁹The SSUTA definition of candy excludes items containing any amount of flour. A 3 Musketeers bar contains flour as an ingredient, while a Snickers bar does not.

¹⁰⁰Gudrais, Elizabeth, "Bagel Tax Pops Up in Talks on Streamlining Sales Tax", Providence Journal, March 30, 2006.

¹⁰¹As reported by CCH, Utah Governor Jon Huntsman, Jr., signed legislation on March 17, 2006, that repeals most of the provisions conforming state law to the provisions of the Streamlined Sales and Use Tax (SST) Agreement, including the controversial destination-based sourcing changes. Many of these provisions had been scheduled to come into effect on July 1, 2006, which would have resulted in Utah becoming a full member of the SST Governing Board (S.B. 233, Laws 2006, effective July 1, 2006.)

¹⁰²In reviewing the compliance legislation of the member states, both approaches are noted.

The Retail Council of New York State supports a streamlined sales tax as a way to “level the playing field” with remote sellers who are not required to charge the sales tax.¹⁰³ Nevertheless, the playing field will not be completely level until all remote sellers are required to collect tax. The Agreement is voluntary. It is unlikely that a majority of sellers—especially e-commerce “dot coms”—will voluntarily register with streamlined member states.¹⁰⁴ Congressional action to overturn the *Quill* decision would be the only sure way to fully address the concerns of these brick-and-mortar stores.

The Retail Council’s support of a level playing field raises yet another consideration for New York businesses. By encouraging increased tax collection among remote sellers, the Streamlined collection system would place additional or new tax collection responsibilities on many New York businesses. New York businesses would face increased tax collection responsibilities because Streamlined member states will expect New York’s retailers to begin collecting tax on sales shipped into the member states.

For some New York businesses, such as art dealers or book sellers, this would represent an extension of current sales tax collection obligations to include other jurisdictions where they make sales. However, for New York businesses selling certain other products not taxable in New York, this would represent an entirely new tax compliance obligation. New York exempts from sales tax a number of products taxed by other states (e.g., food, magazines, newspapers, non-prescription drugs, digital music downloads, and other digital products like photos or movies). Under the Streamlined sales tax, New York businesses that register under the Agreement selling these products into member states volunteer to collect tax for those states. This would represent a new tax compliance obligation on these businesses. For example, a New York retailer of over-the-counter drugs does not collect sales tax in New York because those products are exempt from New York’s sales tax. If that business does not have nexus with any other state (e.g., it only has offices and employees in New York) it is not obligated to

¹⁰³See <http://www.retailcouncilnys.com>, 2006 Legislative Agenda.

¹⁰⁴For example, the largest e-commerce company, Amazon.com, noted in a September 2005 Associated Press story that it has “no plans to volunteer” as a Streamlined Sales Tax seller. <http://www.msnbc.msn.com/id/9146881>, (September 3, 2005).

collect other states' sales taxes on its remote sales. However, as a voluntary streamlined seller, that company would begin collecting tax on its sales made into 17 of the Streamlined member and associate member states — and their local taxing jurisdictions — where over-the-counter drugs are taxable.¹⁰⁵

This new tax collection responsibility would increase the costs of doing business for that New York business. If the streamlined technology models or administrative processes are not simple enough, or if the compensation paid to CSPs to provide services to streamlined registrants is insufficient, the new tax collection responsibilities could be detrimental to such businesses. The Direct Marketing Association cites this as one reason it objects to the Streamlined sales tax. It has stated that the Agreement has not sufficiently simplified the tax process.¹⁰⁶

¹⁰⁵CCH Tax Research NetWork, Sales and use tax quick answer chart for Medicines, Medical Services, and Devices, as of March 14, 2006.

¹⁰⁶See for example, Campanelli, Melissa, "Enzi, Dorgan Want Hearing on Remote Sales Tax Bills", *DM News*, March 30, 2006, at www.dmnews.com

Revenue Implications for New York

Promoting a level playing field between remote sellers (such as mail order and e-commerce companies) and brick-and-mortar retailers so that each has the same tax collection responsibilities is a basic goal of the streamlined sales tax effort. Expanded tax collection duties for remote sellers— whether from a voluntary system such as the SSUTA or from required collection under possible federal streamlined legislation— should, all else equal, increase state and local sales tax revenues.

A number of well-publicized studies (e.g., *State and Local Sales Tax Revenue Losses from E-Commerce: Estimates as of July 2004*, by Professors Bruce and Fox at the University of Tennessee¹⁰⁷) have estimated the amount of uncollected sales tax on remote sales. Attention must also be given to similarly important revenue changes stemming from action taken to conform a state's sales tax to the requirements of the Agreement.

This section provides an overview of the revenue implications for New York of joining the Streamlined Sales and Use Tax Agreement. First, revenue impacts from the initial conformity legislation are studied. Second, the potential amount of revenue New York could receive from increased collection on remote sales is discussed. This section concludes by considering additional revenue implications for localities imposing sales tax.

¹⁰⁷Available at <http://cber.bus.utk.edu/ecomm/Ecom0704.pdf>

Initial Conformity

As discussed earlier in this report, there are a number of areas where the New York sales tax base and rates are not compliant with the Streamlined Sales and Use Tax Agreement. The revenue impact of conformity legislation would be determined by the decisions made by policymakers to bring these areas into conformity. The decisions could attempt to balance measures that increase revenue with those that decrease revenue. Under this approach there may be “winners” or “losers” among taxpayers but, from a broad perspective, the changes to the sales tax base combined with adjustments to the tax rate could be crafted to have only a minor impact on State revenues. However, this would not be without risks. Given the sheer number of changes that would be required in the Tax Law to conform to SSUTA, there may be unanticipated revenue swings due to interactions between the provisions of the new tax. As such, becoming a member state would introduce a new source of uncertainty to New York’s State and local sales tax revenue forecasts.

There would also be new costs to New York if the State conformed its sales tax to the Streamlined Agreement. Adopting the new technologies that member states must accommodate (e.g., participating in the central registration system, accepting the simplified electronic return, developing the rate and address databases) would require extensive systems programming and processing changes by the Tax Department. Another significant new cost would be the vendor compensation that member states must grant to Certified Service Providers. The monetary allowances approved by the Governing Board for voluntary sellers that use CSPs range from 2 percent to 8 percent of tax collected.

Remote Sales

Significant new revenue from Internet and other remote sales is not immediately realized when a state joins as a member state of the Streamlined Sales and Use Tax Agreement. By agreeing to simplify sales tax compliance in accordance with the Agreement, and offering a tax amnesty, member states expect to convince remote sellers to voluntarily collect tax. This expectation is reflected in the fiscal notes accompanying the member states’ conformity legislation. Generally, these states did not anticipate a windfall of revenue due to their membership in the Agreement.

While the streamlining effort represents a step towards promoting tax collection by non-nexus sellers, the best possible scenario for the member states would be Congressional action

requiring remote sellers to collect tax on all sales into states that are members of the Agreement. Such action could lead to significant amounts of “new” revenue from Internet and other remote sales for the member states.

However, even if there is Congressional action to compel remote sellers to collect tax for states that are members of the Agreement, there is substantial uncertainty about the amount of possible revenue gains. A 2000 study by the United States Government Accountability Office (previously named the General Accounting Office) illustrates how e-commerce sales tax estimates can vary widely depending on the assumptions used about the volume of remote sales, taxability of business-to-business sales, extent to which tax is already collected on remote commerce, and other factors. The GAO’s sensitivity analysis showed that New York’s 2003 State and local sales tax losses from uncollected mail order and Internet sales could range from \$521 million to \$2.3 billion.¹⁰⁸

The widely cited Bruce and Fox paper noted above estimated that New York’s total State and local sales and use tax revenue losses from e-commerce in 2003 were as much as \$1.1 billion. Their 2008 estimates are as high as \$2.4 billion in State and local tax.¹⁰⁹ In contrast, national tax loss estimates produced by the Direct Marketing Association are closer to the low end of the GAO estimates.¹¹⁰

Analysis by the Department of Taxation and Finance suggests that the amount of uncollected New York sales tax from remote sales, including e-commerce, is towards the low end of the GAO’s range—substantially less than the amount estimated by Bruce and Fox.

¹⁰⁸United States General Accounting Office. *Electronic Commerce Growth Presents Challenges; Revenue Losses Are Uncertain*, June 2000.

¹⁰⁹Bruce and Fox, pages 7 and 8.

¹¹⁰Johnson, Peter, *A Current Calculation of Uncollected Sales Tax Arising from Internet Growth*, March 2003. This study did not produce state-by-state estimates. Johnson’s projection for nationwide uncollected sales tax on e-commerce in 2011 is \$4.5 billion compared to \$34 billion (in 2008) for Bruce and Fox.

The Department estimates that uncollected New York State sales tax in 2005 from business-to-consumer (B2C) remote sales was approximately \$290 million.¹¹¹ For comparison, this is under 3 percent of SFY 2005-06 State sales tax receipts and less than one-half of the net revenue gained in SFY 2005-06 from the suspension of the clothing and footwear year-round exemption for items priced under \$110. This analysis suggests that New York's policymakers should exercise caution if it is assumed that a large amount of "new" revenue from e-commerce and mail order sales can be raised by conforming to the Streamlined Sales and Use Tax Agreement.

The following factors are the main determinants of this position:

- **New York Sales tax is currently collected on a substantial share of mail order and e-commerce sales.** New York City's status as an international locus of commerce encourages catalog and e-commerce businesses to have offices, employees, distribution centers or some other presence in New York, thereby creating an existing requirement for them to collect the State's sales tax.
- **Increasing numbers of retailers are establishing ties between their brick-and-mortar stores and e-commerce affiliates.** This business arrangement, as described in Forrester Research's 2004 report, *The Growth of Multichannel Retailing*,¹¹² generally results in a tax collection requirement for sales made by a multichannel business over the Internet, by catalog, or other remote means. An increasing share of e-commerce is conducted by this business model. Forrester notes that multichannel retailers account for more than 75 percent of online sales.¹¹³ This finding is confirmed by the Department of Taxation and Finance's analysis of Internet Retailer magazine's *Top 500 Guide* listing the largest retail web sites.¹¹⁴ This analysis found that the vast majority of large retailers that have a brick-and-mortar retail presence and a web presence are already registered to collect tax in New York.

¹¹¹The estimated amount of uncollected local New York sales tax is approximately \$300 million. No revenue losses from untaxed remote business-to-business (B2B) sales are included in these estimates.

¹¹²Carrie Johnson, *The Growth of Multichannel Retailing*. Forrester Research, Inc., July 2004. Available from the National Governors Association web site at <http://www.nga.org/cda/files/0407multichannel.pdf>

¹¹³*The Growth of Multichannel Retailing*, page 8.

¹¹⁴Internet Retailer, *Top 500 Guide, Profiles and Statistics of America's 500 Largest Retail Web Sites Ranked By Annual Sales*. 2006 Edition.

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- **New York exempts many products commonly sold by mail order or Internet businesses.** New York does not impose sales tax on certain products that are frequently sold via catalogs or the Internet, including prescription and over-the-counter drugs, vitamins, concert tickets, movie theater admissions, airline tickets, most clothing and footwear, college textbooks, and digital music downloads.

Impact on New York's Localities

Some of the changes required in order to document compliance with the Agreement would exclusively impact New York's local sales taxes. This report has pointed out numerous areas where local taxes do not meet the requirements of SSUTA. These include discrepancies between the State and local tax bases where localities have the option of participating in exemptions or taxing certain products at a lower tax rate than their general rate.

If the initial conformity measures make changes that reduce local revenue, such as requiring all localities to offer the Qualified Empire Zone Enterprise (QEZE) exemptions, the State could hold the localities harmless by creating new reimbursement mechanisms. However, such an action would have commensurate costs to the State.

Another example of local-only impacts is revenue shifts between localities due to Streamlined procedures that allow sellers to source transactions with the purchaser's ZIP code instead of the purchaser's actual location. This would redistribute sales tax revenue among counties and cities that share ZIP codes to the jurisdiction with the lower rate.

Conclusion

It is a significant achievement that the Streamlined Sales and Use Tax Agreement is now effective with thirteen full member states and seven associate member states. The Agreement represents an important step towards reducing the burden of state and local sales tax collection and encouraging sales tax collection on remote sales.

New York's existing sales tax was originally modeled on local sales taxes existing in New York City and in various counties, cities, and school districts prior to the enactment of Tax Law Articles 28 and 29 in 1965. Over the last 40 years the tax has been structured to reflect the policy and revenue priorities of State and local policymakers. As summarized in Appendix A, a significant number of changes to this structure would be necessary before New York could certify that it substantially complies with the SSUTA. Some of these changes could promote a simpler tax structure; others may limit the flexibility of the State in crafting its annual financial plan and providing for the revenue needs of localities.

As of October 2006, more than 1,000 businesses have voluntarily registered with the member states as streamlined sellers. No statistics regarding the amount of "new" revenues collected for the member states are available. The availability of Certified Service Providers should entice more businesses to volunteer,¹¹⁵ but without federal legislation, the large mail order and e-commerce "dot com" businesses that dominate their industries cannot be required to collect tax for any member state where they do not have a nexus.

¹¹⁵Three CSPs have been certified by the Governing Board: Taxware, Avalara, and Exactor.

Sales tax simplification is the central principle of the Streamlined Sales Tax effort. The extent to which this objective is achieved by the Agreement is yet to be determined. Recent proposals to amend the SSUTA would appear to make sales tax collection more complex for multi-state businesses.¹¹⁶ Similarly, strategies taken by some member states to work around the SSUTA limitations (in order to maintain current tax treatment) adds complexity to tax administration.¹¹⁷

There is the potential for meaningful sales tax simplification through a broad-based reform of the New York sales tax that includes enactment of Streamlined conformity. Both New York-based businesses and retailers making remote sales to New York residents would benefit from strict adoption of some of the Agreement's provisions such as elimination of local tax options, ample notification of local tax rate changes, elimination of exemption thresholds and standardization of product definitions. Low cost, efficient software to facilitate tax collection and remittance would also benefit State retailers. However, as this report points out, a significant amount of legislative autonomy and flexibility would be surrendered as a trade-off for enacting these reforms.

Nearly every state with a sales tax became a member of the Streamlined Sales Tax Project, but far fewer have taken action to adopt the provisions required to become a member state of the Streamlined multi-state compact. Several of these states (including Ohio and Utah) are reconsidering their commitment to adopt all of the required conforming changes.

The member states are continuing to implement the Agreement, including certification of the technological solutions for sales tax collection. At the same time, states desire federal legislation to endorse the SSUTA and require tax collection on remote sales for the member states. The outcome between various interest groups and the future of the Congressional action may determine the success of the Streamlined Sales and Use Tax Agreement.

¹¹⁶These proposals are available at www.streamlinedsalestax.org

¹¹⁷For example, adopting the SSUTA definition of "clothing" would have required Minnesota and New Jersey, (both member states) to exempt clothing items made of fur. To maintain their preexisting tax on fur items, these states enacted new fur clothing taxes. As a result, there is minimal revenue impact to the state, but an additional compliance burden is placed on businesses that sell fur products.

Legislation to modernize and simplify the New York sales tax would be worthwhile, but it is unclear if the proposal developed by the Streamlined project would yield net benefits to New York's taxpayers and local businesses. The likelihood of the State and its localities generating vast amounts of "new" sales tax revenue from taxing mail order and e-commerce sales is low. As the Streamlined project moves forward, New York's policymakers may wish to consider a number of options, including the option of adopting some, but not all, of the Agreement's provisions to realize some benefits of simplification short of full conformity.

Appendix A. Summary of Requirements New York Must Accept to Participate in the Streamlined Sales and Use Tax Agreement

This report has examined the individual requirements of the Streamlined Sales and Use Tax Agreement. It described a particular SSUTA requirement, or group of requirements, explained New York’s current law and practice with respect to that topic, and commented on whether New York could document compliance with the Agreement.

This Appendix summarizes these findings. It presents each of the different Streamlined requirements and notes relevant New York provisions with respect to the requirement. However, because there has not been a uniform approach in the streamlining effort to defining “substantial compliance,” this Appendix should not be viewed as providing definitive conclusions about the extent to which New York’s existing State and local sales tax is or is not compliant with the Streamlined Agreement.

SSUTA Requirement	Relevant New York State and Local Sales Tax Provisions
State Level Administration	New York currently provides for state-level administration of its State and local sales taxes.
Uniform State and Local Tax Base	<p>New York's State and local sales taxes are non-uniform in the following areas:</p> <ul style="list-style-type: none"> • Local options with respect to various exemptions such as: <ul style="list-style-type: none"> ○ clothing and footwear; ○ Qualified Empire Zone Enterprise purchases; and, ○ residential solar energy systems. • Local sales tax differences in New York City including: <ul style="list-style-type: none"> ○ New York City's imposition of a local sales tax on the services of beauty salons, barber shops, health salons, massage, gymnasiums, saunas, and credit bureaus; ○ New York City's local exemption for interior decorating and design services; ○ New York City's unique standard for its exemption of hotel occupancy by "permanent residents;" ○ New York City's taxation of energy used in the production of gas, electricity, refrigeration or steam; ○ New York City's taxation of certain services to exempt tangible personal property used in farm production or in commercial horse boarding; and ○ the tax imposed in New York City on property used at qualified marine terminal facilities. • The sales tax on utility services imposed by twenty school districts, located in 15 counties. • The "segmented" sales taxes imposed by the cities of Lockport and Niagara Falls (Niagara County); Long Beach (Nassau County); and, Newburgh and Port Jervis (Orange County). These cities impose sales tax on selected goods and services in place of imposing tax on the entire State base.
Participation in an Online Registration System	<p>New York would need to participate in the Streamlined registration system.</p> <p>Uncertainty exists regarding whether New York could continue with the current statutory requirements restricting the issuance of tax registrations to persons convicted of tax crimes or persons having outstanding tax debts.</p>
Notice of Tax Rate Changes	Local tax rate changes would have to occur on the first day of a calendar quarter and with a minimum of 60 days notice. The notice requirement is extended to 120 days for retailers selling via printed catalogs.
State and Local Rate Databases	<p>Streamlined requires the state to provide a database identifying State and local sales tax rate and jurisdictional information based on 5- and 9- digit ZIP codes. If the ZIP code area includes more than one tax rate, the database must apply the lowest rate in the ZIP code. On sales that are not "over the counter," sellers would use the customer's ZIP code to determine the tax rate and, in turn, the locality receiving the local share of the tax revenue.</p> <p>New York's Sales Tax Jurisdiction and Rate Lookup function, although more accurate than a ZIP code-based database for assigning tax rates and jurisdictions, would not meet the Agreement's requirements.</p>
Single Rate	<p>New York's State and local sales taxes use "additional rates" in the following areas:</p> <ul style="list-style-type: none"> • an additional 5 percent State tax levied on information and entertainment services furnished over the telephone (e.g., 900 numbers); • a cents-per-gallon sales tax on motor fuel and diesel motor fuel; • an additional Metropolitan Transportation Authority rate of 0.375 percent in the 12 counties of the Metropolitan Commuter Transportation District and an associated ¼ cent-per-gallon MCTD sales tax on motor fuel and diesel motor fuel; • a \$1.50 per unit per day fee on hotel occupancy in New York City; • the New York City sales tax on parking services set at 6 percent rather than the 4 percent rate on other goods and services; and • the New York City sales tax additional rate of 8 percent on parking services sold in Manhattan.

SSUTA Requirement	Relevant New York State and Local Sales Tax Provisions
Sourcing Rules	<p>New York would need to certify that it is in compliance with 48 sourcing-related items found in the Certificate of Compliance. While generally following “destination sourcing” principles the Agreement imposes several new requirements including:</p> <ul style="list-style-type: none"> • A fallback to origin-based sourcing if a seller does not know its customer’s location or billing address. • Sourcing services based on the “location of first use” rather than the location where the service is rendered. • Sourcing certain telecommunications services to a “place of primary use” although the services will be used statewide. • Allowing business purchasers to use a <i>Multiple Points of Use</i> exemption document for computer software, services, and digital goods purchased for concurrent use in multiple jurisdictions.
Enactment of Exemptions	<p>When enacting exemptions, New York would need to abide by the following uniform product definitions found in the Agreement:</p> <p>Alcoholic beverages Ancillary services Candy Clothing Clothing accessories or equipment Computer Computer software Coin-operated telephone service Conference bridging service Delivered electronically Detailed telecommunications billing service Dietary supplement Directory assistance Drug Durable medical equipment 800 service Fixed wireless service Food and food ingredients Food sold through vending machines Grooming and hygiene products International [telecommunications service] Interstate [telecommunications service] Intrastate [telecommunications service] Load and leave Mobile wireless service Mobility enhancing equipment 900 service Over-the-counter drug Paging service Pay telephone service Prepaid calling service Prepaid wireless calling service Prepared food Prescription Prewritten computer software Prosthetic device Protective equipment Residential telecommunications service Soft drinks Sport or recreational equipment Telecommunications service Tobacco Value-added non-voice data service Vertical service Voice mail service</p>

SSUTA Requirement	Relevant New York State and Local Sales Tax Provisions
Exemption Administration	New York must adopt the uniform policy with respect to exemption certificates. In general, this policy relieves the seller of any liability associated with an exempt sale as long as the seller receives a completed exemption certificate from the purchaser.
Tax Return Administration	<p>New York would agree to utilize a uniform simplified electronic return that Model 1, 2 or 3 sellers may choose to file in lieu of the standard sales tax return.</p> <p>New York would also need to conform to Streamlined requirements with respect to uniform rules for the remittance of funds, uniform rules for the recovery of bad debts, and uniform customer refund provisions.</p>
Sales Tax Holidays	<p>Any temporary sales tax exemptions in effect while New York is a member state must:</p> <ul style="list-style-type: none"> • only apply to items for which there is a uniform definition in the Agreement; • not use local options; • give sellers at least 60 days' notice before the calendar quarter in which the exemption period begins; and • abide by the sales tax holiday administrative procedures in the SSUTA.
Caps and Thresholds	<p>New York uses sales tax thresholds in the following areas:</p> <ul style="list-style-type: none"> • clothing and footwear items priced under \$110; • coin-operated telephone services where the charges are 25 cents or less; • social or athletic club dues below \$10 per year; • hotel room rent of \$2 or less per day; • admission charges of 10 cents or less; • precious metal bullion sold for investment for more than \$1,000; • 75 percent of the admission charge to a qualified place of amusement; • race horses purchased through claiming races (partial exemption); and • tangible personal property sold at a person's residence where the receipts are not expected to exceed \$600 per year (e.g., garage sales).
Rounding Rule	The rounding algorithm specified in the Agreement is very similar to current New York practice.
Library of Definitions	<p>Streamlined conformity requires New York to utilize the uniform definitions contained in the Agreement's Library of Definitions</p> <p>If a term defined in the Library of Definitions appears in NY's sales and use tax statutes or administrative rules or regulations, the State must adopt the Library definition of the term in the Tax Law in substantially the same language as the Library definition. The Library of Definitions contains 64 definitions contained in three Parts:</p> <p>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.</p> <p>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.</p> <p>Part III Sales tax holiday definitions.</p>
Taxability Matrix	<p>Streamlined conformity requires New York to complete a taxability matrix specifying its tax treatment of each of the administrative and product definitions in the SSUTA's Library of Definitions.</p> <p>A seller or Certified Service Provider that relies on the information in the matrix is relieved from liability for incorrectly collecting tax resulting from erroneous information provided in the matrix by New York.</p>
Effective Dates for Rate Changes	New York would need to follow transitional rules for service contracts covering a period which overlaps the effective date of a tax rate change

SSUTA Requirement	Relevant New York State and Local Sales Tax Provisions																
Tax Amnesty	New York would offer a tax amnesty from uncollected or unpaid sales or use tax to sellers that voluntarily register under the Agreement.																
Provisions for Technology Models- Method of Remittance	<p>Streamlined conformity would require New York to allow sellers to use the three technology models described in the SSUTA:</p> <p>MODEL 1, wherein a seller selects a Certified Service Provider (CSP) as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.</p> <p>MODEL 2, wherein a seller selects a Certified Automated System (CAS) to use which calculates the amount of tax due on a transaction.</p> <p>MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.</p>																
Provisions for Technology Models: Monetary Allowances	<p>New York would agree to offer monetary compensation to Certified Service Providers and sellers that use a Certified Automated System. The Governing Board recommends the following schedule for CSP compensation:</p> <table border="1" data-bbox="521 758 1430 1020"> <thead> <tr> <th data-bbox="521 758 893 789">Tax Remitted per Seller</th> <th data-bbox="893 758 1430 789">Rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="521 821 893 852">≤ \$250,000</td> <td data-bbox="893 821 1430 852">8.0%</td> </tr> <tr> <td data-bbox="521 852 893 884">> \$250,000 and ≤ \$1,000,000</td> <td data-bbox="893 852 1430 884">7.0%</td> </tr> <tr> <td data-bbox="521 884 893 915">> \$1,000,000 and ≤ \$2,500,000</td> <td data-bbox="893 884 1430 915">6.0%</td> </tr> <tr> <td data-bbox="521 915 893 947">> \$2,500,000 and ≤ \$5,000,000</td> <td data-bbox="893 915 1430 947">5.0%</td> </tr> <tr> <td data-bbox="521 947 893 978">> \$5,000,000 and ≤ \$10,000,000</td> <td data-bbox="893 947 1430 978">4.0%</td> </tr> <tr> <td data-bbox="521 978 893 1010">> \$10,000,000 and ≤ \$25,000,000</td> <td data-bbox="893 978 1430 1010">3.0%</td> </tr> <tr> <td data-bbox="521 1010 893 1041">> \$25,000,000</td> <td data-bbox="893 1010 1430 1041">2.0%</td> </tr> </tbody> </table>	Tax Remitted per Seller	Rate	≤ \$250,000	8.0%	> \$250,000 and ≤ \$1,000,000	7.0%	> \$1,000,000 and ≤ \$2,500,000	6.0%	> \$2,500,000 and ≤ \$5,000,000	5.0%	> \$5,000,000 and ≤ \$10,000,000	4.0%	> \$10,000,000 and ≤ \$25,000,000	3.0%	> \$25,000,000	2.0%
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