



PHIL BREDESEN
Governor

STATE OF TENNESSEE
DEPARTMENT OF REVENUE
ANDREW JACKSON STATE OFFICE BUILDING
NASHVILLE, TENNESSEE 37242

REAGAN FARR
Commissioner

September 2, 2008

Mr. Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board, Inc.
4205 Hillsboro Pike, Suite 305
Nashville, Tennessee 37215

Dear Mr. Peterson:

The letter is in response to your email, dated August 21, 2008, regarding questions submitted as a result of the compliance review for the 2008 re-certification of Tennessee as an associate member of the Streamlined Sales Tax Governing Board pursuant to Section 801(C) of the Streamlined Sales and Use Tax Agreement (SSUTA). Your questions and Tennessee's response are included below.

- 1. The tax on digital products is imposed on "retail sales in this state, indicated by the residential street address or the primary business street address of the subscriber or consumer." Unsure if this is the same result as would arrive using Section 310.*

Pursuant to Public Chapter 602 Sections 173 and 174 (2007), amendments to Tennessee statutes to adopt Streamlined uniform sourcing pursuant to Sections 309 and 310 of the SSUTA are scheduled to take effect July 1, 2009, and will apply to specified digital products effective July 1, 2009. Tennessee included information in the 2007 certificate of compliance indicating compliance with Sections 309 and 310 of the SSUTA effective July 1, 2009.

- 2. The use of a SER and annual returns if less than \$1000 seems to only be available for Model 1 and 2 sellers, with no mention of Model 3 sellers.*

Pursuant to Public Chapter 602 Section 68 (2007), Tennessee has adopted the definition of a Model 3 Seller. Other provisions in the SSUTA referencing Model 3 Sellers have not been adopted in Tennessee sales and use tax statutes. Legislation conforming to provisions related to Model 3 will be submitted to the Tennessee legislature at such time as the Governing Board creates performance standards for Model 3 Sellers, enters into

agreements with sellers establishing the sellers are Model 3 Sellers, and allows sellers to register through the Streamlined Central Registration System as a Model 3 Seller. Changes to conform to provisions of the SSUTA that have no meaning cannot be included in Tennessee statutes.

Pursuant to Tenn. Code Ann. Section 67-6-536(a) effective January 1, 2008, the statute was amended to clarify that only Model 1 and Model 2 sellers that do not have locations in Tennessee may use the SER. Public Chapter 602 Section 161 (2007) provides any Model 1 and 2 Seller may submit their returns in such format as required by the SSUTA effective July 1, 2009. Tennessee included information in the 2007 certificate of compliance indicating compliance with Section 318 effective July 1, 2009.

Pursuant to Tennessee Sales and Use Tax Rules and Regulations 1320-5-1-.74 any taxpayer whose sales and use tax due in the prior 12 months that has averaged less than \$200 a month or a new taxpayer who will likely not owe more than \$2,400 in a 12-month period may file returns and make remittances on a quarterly, semi-annual, or annual basis. Currently, in Tennessee any seller who owes or expects to owe less than \$2,400 in a 12-month period may file an annual return. Streamlined registrants that do not have locations in Tennessee and who are not already registered in Tennessee are placed in a non-filing status for the first 12 months after registration or until such time as the seller files its first return. At the time the seller files its first return, the Department contacts the seller to determine the appropriate filing status needed by the seller.

3. *The bundled transactions provisions includes telecommunication services, ancillary services, Internet access and audio or video programming services, but does not have the section about services sold at different rates.*

Tennessee currently has multiple state and local rates that are applicable to telecommunication services, ancillary services, and video programming services. Tennessee statutes do include provisions for determining the tax treatment of such a bundle when the services are sold at different rates. Tenn. Code Ann. Section 67-6-539(b) effective July 1, 2004, states:

(b) Notwithstanding any other law to the contrary, in the case of a bundled transaction of telecommunication services, ancillary services, Internet access services, or audio or video programming services, or direct-to-home satellite television programming services:

- (1) If the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services shall be subject to tax, unless the provider can identify, by reasonable and verifiable standards, such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

- (2) If the price is attributable to services that are subject to tax at different tax rates, the total price shall be treated as attributable to the services subject to tax at the highest tax rate, unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
- (3) If the taxes that would have otherwise been collected on the distinct and identifiable services would have been designated to different funds or purposes, such designation shall be based on the same allocation utilized in subdivision (b)(1) or (2). However, if the total of the bundled transaction was subjected to tax or subjected to tax at the higher combined state and local rate, a reasonable allocation method approved by the commissioner shall be made for designation of the taxes to the different funds or purposes.
- (4) The provisions of this section shall apply unless otherwise provided by federal law.

Public Chapter 602 Sections 146, 147, 148, and 164 (2007) effective July 1, 2009, repeal Tennessee statutes imposing different tax rates on such services in compliance with Section 308 of the SSUTA. After December 31, 2005, member states may not have multiple tax rates on telecommunication services, ancillary services, audio and video programming services, and Internet access. Public Chapter 602 Section 162 (2007) effective July 1, 2009, amends and rewrites Tenn. Code Ann. Section 67-6-539 removing the language related to different tax rates. The statute was amended to comply with Section 330 and to remove language that will have no meaning effective July 1, 2009.

4. Sales price definition contains a bundling provision.

Public Chapter 602 Section 64 (2007) effective January 1, 2008, provides the definition of sales price includes the following provision,

- (vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as single product or piece of merchandise.

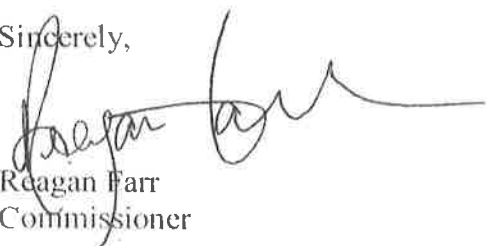
Public Chapter 602 Section 133 (2007) provides for adoption of the bundled transaction definition, effective July 1, 2009. Tennessee failed to include a provision in the conforming legislation scheduled to take effect July 1, 2009, for the repeal of the bundling provision from the definition of sales price to coincide with the effective date of adoption of the bundled transaction definition. Legislation to repeal the bundling provision from the definition of sales price at the same time the bundled transaction definition becomes effective will be submitted to the Tennessee legislature for consideration and adoption

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prior to the July 1, 2009. Tennessee included information regarding the omission in the 2007 compliance review of Tennessee petition for membership under Section 801(C) of the SSUTA.

If you have additional questions, please contact Sherry Harrell at (615) 532-6021.

Sincerely,

A handwritten signature in black ink, appearing to read "Reagan Farr", with a long horizontal flourish extending to the right.

Reagan Farr
Commissioner

RF:sh