



## **Adoption of the Streamlined Sales and Use Tax Agreement**

**A Report Prepared for the  
Joint Standing Committee on Taxation  
Pursuant to P.L. 2005, c. 100, Resolve**

**Department of Administrative and Financial Services  
Maine Revenue Services**

**January, 2006**

## Streamlined Sales Tax Project Overview<sup>1</sup>

The Streamlined Sales Tax Project (“Project”) is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project’s proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection. The Project’s proposals are focused on improving sales and use tax administration systems for both Main Street and remote sellers for all types of commerce.

Forty-four states and the District of Columbia are involved in the Project. Forty-five states and the District of Columbia impose a sales and use tax.<sup>2</sup>

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

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

- **Uniform definitions within tax laws.** Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the Project’s definitions, a certain amount of impact on state revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through common definitions.
- **Rate simplification.** States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or taxable services at another rate. State and local governments will accept responsibility for notice of rate and boundary changes at restricted times. States will provide an on-line rate/jurisdiction database to simplify rate determinations.
- **State level tax administration of all state and local sales and use taxes.** Businesses will no longer file tax returns with each local government within which it conducts business in a state. Each state will provide a central point of administration for all state and local sales and use taxes and the distribution of the local taxes to the local governments. A state and its local governments will use common tax bases.

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<sup>1</sup> Document entitled “Executive Summary” from <http://streamlinedsalestax.org/execsum0105.pdf>.

<sup>2</sup> The original document dated January 2005 reported forty-two states. All taxing states, with the exception of Colorado, are now participating.

- **Uniform sourcing rules.** The states will have uniform and simple rules for how they will source transactions to state and local governments. The uniform rules will be destination/delivery based and uniform for tangible personal property, digital property, and services. Special sourcing rules will be developed for unique industries.
- **Simplified exemption administration for use- and entity-based exemptions.** Sellers are relieved of the “good faith” requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for paying the tax, interest and penalties for claiming incorrect exemptions. States will have a uniform exemption certificate in paper and electronic form.
- **Uniform audit procedures.** Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.
- **State funding of the system.** To reduce the financial burdens on sellers, states will assume responsibility for funding some of the technology models. The states are also participating in a joint business – government study of the costs of collection on sellers.

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

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

The Streamlined Sales Tax Project envisions two components to the legislation necessary to accomplish the Project’s goals. First, states would adopt enabling legislation referred to as the Uniform Sales and Use Tax Administration Act (“Act”). The Act allows the state to enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and all types of commerce. The Act does not require any amendments to a state’s sales and use tax law.<sup>3</sup>

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<sup>3</sup> Maine enacted the Uniform Sales and Use Tax Administration Act during the 120<sup>th</sup> Legislature (Chapter 496, P.L. 2001)

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

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

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

On November 12, 2002, thirty states and the District of Columbia approved the interstate Agreement provisions. As of January 2005, twenty-one states have moved forward and enacted all or part of the conforming legislation.

It’s anticipated that states that enacted the conforming legislation and are found to be in compliance with the Agreement will continue as the governing states of the interstate Agreement of the future. States will verify compliance with the requirements of the Agreement in early 2005.

The project website is [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org).

### **Status of SSTP**

The Streamlined Sales and Use Tax Agreement (“Agreement”) becomes effective once ten (10) states representing at least 20 percent of the population of states with a sales tax are in conformity with the provisions of the Agreement. The Agreement became effective on October 1, 2005 when 18 states were determined to be substantially in compliance with the Agreement.

Full-member states, now referred to as the “Governing States” and making up the “Governing Board”, include Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Dakota and West Virginia. Associate-member states, those found to be in compliance but with effective dates after October 1, 2005, are

Arkansas, Ohio, Tennessee, Utah and Wyoming. Nevada will become an Associate-member state on January 1, 2006. It is anticipated that other states will become members as this effort moves forward.

"Today's launch of the Streamlined Agreement brings the tireless work of so many from the state and local government communities and the business sector to fruition in the form of a more rational and efficient sales tax system for the nation as a whole," said Dwight Cook, president of the newly-formed Streamlined Sales Tax Governing Board, Inc., a not-for-profit entity established to manage and administer the Streamlined Sales and Use Tax Agreement.

### **Maine's participation to date**

Since Maine adopted enabling legislation during the 120<sup>th</sup> Legislature, Maine has been a voting member in the Project and has been involved in working groups and in the crafting of the agreement language.

Now that the Agreement is in effect, Maine is part of an advisory council to the Governing Board along with all the other participating states that are not yet part of the Governing States. As part of the "State and Local Advisory Council", Maine's role is to "advise the governing board on matters pertaining to the administration of the Agreement".

### **Conforming to the Agreement**

During the 122<sup>nd</sup> Legislature, LD 1094 was enacted (Chapter 110, P.L. 2005) as a resolve requesting the Bureau of Revenue Services to report to the Taxation Committee by January 15, 2006

- what changes are needed in order to conform to the Agreement,
- what impact conformity would have and
- what fiscal and policy issues are associated with conformity.

The remainder of this report provides this information.

Conformity to the Agreement is not intended to be a means of raising or lowering state tax revenues. As Maine amends its statutes, however, a certain amount of impact on state revenues is inevitable. The Agreement does not provide a lot of flexibility. However, there are situations where states are offered the ability to include or exclude certain terms that have an impact on revenue.

The following provides an explanation of each of the sections in Article III of the Agreement entitled "Requirements Each State Must Accept to Participate". The term "proposal" in this section refers to the legislation necessary in order to conform to the Agreement.

Section 301: State Level Administration

*Each member state shall provide state level administration of sales and use taxes.*

This issue has more of an impact on those states that have local option taxes where each municipality administers its own tax. The requirement is that each state has only one administrative arm for sales and use tax. Maine provides a state-level administration of sales and use taxes through the Department of Administrative and Financial Services, Bureau of Revenue Services (“MRS”). If Maine was to consider the imposition of local option taxes, MRS would need to be responsible for administration of the local option tax.

No change to the statute is needed regarding this issue.

Section 302: State and Local Tax Bases

*Each member state that has local jurisdictions that levy a sales or use tax shall have a common tax base.*

This issue impacts those sales that have local option taxes where the local tax applies to a different base than the state sales tax. At the present time this does not affect Maine. If Maine was to consider a local option tax, the local option tax would need to apply to all products and services that are subject to the state rate. In other words, Maine could not enact a local option tax only on a few select products or services.

The Agreement does exclude from this issue sales of motor vehicles, aircraft, watercraft, modular homes, manufactured homes and mobile homes. As a result, Maine could impose a local option tax on the sales of automobiles only, for instance, and still be in compliance with the Agreement.

No change to the statute is needed regarding this issue.

Section 303: Seller Registration

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

Any seller wishing to register as part of the Agreement will have the ability to use an on-line centralized registration system. States must be willing and able to electronically accept this information to register the seller in their state. This on-line system was up and running on October 1, 2005.

Maine has no system currently in place for accepting electronic data to register a seller. In order to conform to the Agreement, Maine would need to utilize programming staff to enable us to receive this data and upload the data to our MATS system.

Although no change to the statute is needed regarding this issue, this area will require administrative resources in order to conform.

Section 304: Notice for State Tax Changes

*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.*

Maine must make a reasonable effort to provide sellers with advance notice of rate and legislative changes **as well as limit the effective date of a rate change to the first day of a calendar quarter**. Current procedures within MRS provide for timely notification of any legislative change. It is noted that we must make a “reasonable effort” to limit rate change effective dates. The Agreement goes on to state that our failure to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect taxes for that state.

MRS historically recommends that all changes have an effective date of at least 90 days after enactment in order to provide sufficient time for notice to retailers. Our future recommendations would continue this request but would also add a date certain equal to the beginning of a calendar quarter. This may impact the legislature’s ability to enact a change sooner. It will be important that the legislature understands the importance of the agreement and the problems that may occur if a rate change effective date is something other than the first day of a calendar quarter.

No change to the statute is needed regarding this issue.

Section 305: Local Rate and Boundary Changes (see also Section 307)

*Each member state that has local jurisdictions that levy a sales or use tax shall provide that rate changes will be effective on the first day of a calendar quarter after a minimum of sixty days’ notice to sellers and provide and maintain a database of boundary changes for all taxing jurisdictions, among other requirements.*

This issue is not currently applicable in Maine since we have no local or county option taxes. If Maine was to enact local option taxes, there are a variety of issues we will need to conform to. The main point with this issue is to provide sellers with timely notification of rate changes so that the seller can make timely changes to their systems. States will be responsible for creating rates and boundary databases for use by sellers. For instance, if all Maine municipalities had a local tax, MRS would create a database of all the nine digit zip codes in Maine and the applicable local sales tax rate for each jurisdiction. The seller could then upload this information to their computer system and apply the correct rate based on the zip code of the destination.

No change to the statute is needed regarding this issue.

Section 306: Relief from Certain Liability

*Each member state shall relieve sellers and CSPs from liability to the member state and local jurisdiction 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 a member state on tax rates, boundaries or taxing jurisdiction assignments.*

Maine must relieve sellers and Certified Service Providers (“CSP”) (those acting as agents for sellers in the collection and remittance of sales tax) from additional sales/use tax resulting from seller or CSP relying on erroneous data provided by Maine on any of its databases or matrixes for tax rates, boundaries, or taxing jurisdiction assignments. In short, if MRS provides the wrong information, the seller is held harmless.

Notwithstanding the fact that Maine has little risk on this issue since we have one general state rate, no local option taxes, and no local boundary issues, our statute does not currently support abatement of tax for erroneous information provided by MRS. Abatement of penalties does exist when MRS provides erroneous information.

A modification to the statute is needed in order to be in conformity with the Agreement. See §1766.

Section 307: Database Requirements and Exceptions

*Provides requirements for databases required in Section 305.*

Section 308: State and Local Tax Rates

*No member state shall have multiple state sales and use tax rates.*

*For those states with local taxes, the state shall not have more than one local rate per jurisdiction.*

Maine cannot have multiple sales and use tax rates after 12/31/05. The Agreement does provide an exception of a single additional rate on food, food ingredients and drugs. Local jurisdictions can likewise not have more than one rate. This provision does not apply to sales of electricity, gas or other heating fuels nor motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes.

Maine does not currently conform to this requirement as it has three rates; 5%, 7% and 10%. Food, food ingredients, and (prescription) drugs are currently exempt from sales tax. The 5% tax currently applies to the other listed excepted items.

In order to conform to the Agreement, Maine’s general sales tax rate of 5% (or some compromised rate) would apply across the board to all taxable sales and taxable services. Alternatively, if it is the intent of the legislature to continue taxing meals and lodging at the higher rate of 7% and short term automobile rentals at the 10% rate, Maine would have to move meals, lodging and short term auto rentals out of sales and use tax to a different taxing scheme.

The proposal assumes that Maine will continue with the higher rates of tax on meals, lodging and short term auto rentals, by creating a “Meals and Rentals Tax”. The general rate of 5% will remain in the sales tax statute. See Chapter 721 and the following sections: 1752 (4), (6), (12), (19), (20); 1754-B; 1760 (6), (17), (18), (19), (20), (23-C), (75), (85), (89), (90) & (91); and 1811.

Since 1) fuel and electricity used at a manufacturing facility is currently 95% exempt, 2) “rate thresholds” are not allowed in the Agreement and 3) fuel and electricity are excepted from the

one rate provision, the proposal applies a .25% rate of tax on fuel and electricity used at a manufacturing facility. This is the equivalent to taxing 5% of the sale at a sales tax rate of 5%. Alternatively, fuel and electricity used at a manufacturing facility could be exempted or taxed in its entirety. See §1811. Our approach keeps this line item status quo with current statute. See item 16 on Fiscal Impact Worksheet.

Section 309: Application of General Sourcing Rules and Exclusions from the Rules

*Each member state shall agree to require sellers to source the retail sale of a product in accordance with Section 310.*

The Agreement uses destination in determining where a sale is sourced. For example, if a person in Maine makes a purchase from a remote seller located in New Jersey and has that seller deliver the product to Missouri, the sale is sourced to Missouri (the destination state), and under the Agreement, the seller would collect Missouri's sales tax. Maine has historically applied this same destination-based approach, with the exception of floral deliveries. See below. If a Maine retailer delivers a product outside of Maine, no Maine sales tax applies. To the extent that Maine customers receive deliveries from a state that was previously "origin-based", Maine would receive tax revenue on that transaction. For purposes of our revenue estimation, a nominal effect is realized. See item 18 on the Fiscal Impact Worksheet.

The florist industry has historically regarded their sales nationally based on origin. Maine, for instance, would have received sales tax on all orders taken in Maine even though delivery was made to Florida. The change in sourcing also affects this industry. Although Maine will lose revenue on deliveries made outside the state, we will recognize revenue on deliveries coming to Maine. For purposes of our revenue estimation, we have considered this line item as revenue neutral. See item 20 on the Fiscal Impact Worksheet.

The Agreement's sourcing rules do not apply to sales of watercraft, modular homes, manufactured homes, mobile homes, or motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment. Sourcing of these transactions is according to the requirements of each member state.

Section 310: General Sourcing Rules

The Agreement provides a number of sourcing rules in an attempt to address every possible scenario in the event the destination state is not known. This section deals with sourcing of retail sales other than those listed above, lease or rental of motor vehicles, trailers, semi-trailers or aircraft, the retail sale, including the lease or rental, of transportation equipment and the lease or rental of tangible personal property not included above. Telecommunications services are sourced pursuant to Section 314. Purchases of direct mail are sourced pursuant to Section 313.

Section 311: General Sourcing Definitions

*Provides definition for terms “receive” and “receipt” for purposes of Section 310.*

These sourcing rules will either need to be addressed in the statute, by rule or by bulletin. The approach taken in the proposal is the adoption of these rules in the statute. See §1752(19-B), 1760 (82), §1817.

Section 312: Multiple Points of Use

*Member states will allow a person purchasing digital goods, computer software or a taxable service that will be concurrently available for use in more than one jurisdiction free of tax at the time of purchase.*

This section addresses those situations where a digital good, computer software or a taxable service is purchased in Maine but will be available for use in other states. For instance, a computer program is purchased in Maine, loaded onto a server in Maine, but is utilized by the business’ offices throughout New England. It allows the purchaser to provide an exemption form (MPU) to the seller in order to exempt the transaction. The purchaser is then required to allocate use tax and report the use tax directly to each state.

In order to conform to the Agreement, our statute would need to be modified to allow this “exemption” at the time of purchase. See §1968. Although this exempts certain transactions that are currently taxable in Maine, we would also realize new revenue from retailers outside the state making concurrent use of the property in Maine. For purposes of our revenue estimation, we have considered this line item as revenue neutral. See item 17 on the Fiscal Impact Worksheet.

Section 313: Direct Mail Sourcing

Also see Sections 309 and 310.

This section allows the purchaser of direct mail to provide a Direct Mail Form to the seller in order to exempt the entire transaction. The purchaser is then responsible for reporting directly to each state the appropriate tax. Alternatively the purchaser can provide information to the seller showing the jurisdictions to which the direct mail is delivered. The seller would then collect tax according to the delivery information. In the absence of either, the seller is to use the sourcing rules in Section 310, sub§(A)(5) i.e., sourced to seller’s location.

Maine has a similar exemption for “printed matter”; however, that exemption does not address this issue completely. “Direct mail” includes any item “printed” upon, such as ice scrapers, magnets, etc., not just printed matter. “Direct mail” is also defined to include tangible personal property included with the printed material. Our statute would need to be modified to be in conformity. See § 1752(21), §1760 (83) and §1967.

Section 314: Telecommunication Sourcing Rule

See also Sections 309 and 310.

This section provides sourcing rules for telecommunication services. For services sold on a call-by-call basis, if a call originates and terminates in Maine, the call is sourced in Maine. Also, if the service address is in Maine, any call that originates or terminates in Maine would be sourced to Maine. Service other than call-by-call is sourced to customer's place of primary use.

Mobile telecommunications services are sourced according to the Mobile Telecommunications Sourcing Act previously enacted by Maine. Post-paid calling service is sourced to the origination point of the signal first identified by the seller or seller's service provider. Prepaid calling service is sourced according to Section 310. Additional sourcing rules exist for the sale of private communications.

A nominal loss in revenue is associated with non-residents making intrastate calls while in Maine. Under these sourcing rules, the tax is sourced to the non-residents service address. See item 19 on the Fiscal Impact Worksheet.

Section 315: Telecommunication Sourcing Definitions

*Provides definitions for terms found in Section 314.*

Maine's statute needs to be amended to conform to these rules and definitions. The proposal attempts to closely resemble the revenue stream of our current statute. See §2556-A.

Section 316: Enactment of Exemptions

*A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for the product or for a term that includes the product.*

*A member state may enact an entity-based or a use-based exemption 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.*

A product-based exemption is one that exempts a certain product, such as sales of grocery staples.

An entity-based exemption is one that exempts a specific type of organization from tax, such as sales to hospitals.

A use-based exemption is one that exempts the specific use of a product by the purchaser, such as sales of gas when bought for cooking and heating in residences.

Maine can adopt product-based exemptions without restrictions if the Agreement does not define the product. If the product is defined, the exemption must be for all items covered by the definition. We cannot exempt portions of a defined product.

Maine does have exemptions for products defined in the agreement. Some of our definitions differ from the Agreement definitions while others closely resemble them. Adopting the Agreement's definitions will in some cases exempt items we currently tax and in other cases tax items we currently exempt.

See Section 327 for more details on definitions. A listing of defined terms can be found in Appendix B of the Agreement.

Section 317: Administration of Exemptions

*Each member state shall observe the same process when a purchaser claims an exemption.*

This section provides how exemptions are to be administered. Except for situations involving fraud on the part of the seller, the seller is held harmless when a purchaser improperly claims an exemption as long as the seller follows the requirements of this section. The purchaser is held liable for payment of tax. The SSTP has developed a common “Certificate of Exemption” that a purchaser will provide to the vendor. Each member state agrees to accept this form.

Maine currently has in place Rule 302 which provides some procedures for administering exemptions. Since it applies a good faith standard on the seller which is stricter than the Agreement, this rule will need to be revised to apply a more relaxed standard. As a result, MRS will find itself needing to make more compliance reviews at the purchaser level on each of the transactions rather than making assessments against the seller. This may have a nominal effect on revenue due to timing differences between assessing the seller versus assessing the purchaser. See item 21 of the Fiscal Impact Worksheet.

Section 318: Uniform Tax Returns

*Each member state shall require only one tax return for each taxing period for each seller for the member state and all the taxing jurisdictions within the member state.*

This section requires that Maine have one tax return with a due date no sooner than the 20<sup>th</sup> day of the following month. Any type of additional informational return is allowed but cannot be required more often than twice a year. Maine should also participate with other member states to develop a uniform return and should have the ability to receive electronic returns. Maine also has the option of requiring Model 1, 2 & 3 sellers to file electronically.

Maine currently only requires one return from each retailer. The due date, however, is the 15<sup>th</sup>. Maine also provides for internet filing of returns. The Agreement also provides some filing thresholds which are not consistent with our rule. Our STMV 8 form, filed by retailers engaged in selling vehicles generally, may be regarded as an “additional information return”. It is doubtful that there would be remote sellers selling this type of property, but if so, we cannot require this return more often than twice a year.

The proposal includes changing the due date from the 15<sup>th</sup> to the 20<sup>th</sup>. See §1951-A. Further changes would need to be made to Rule 304 to address other reporting issues addressed in the Agreement. This change results in a small loss associated with the loss of use of tax revenue for 5 days. See Item #1 on Fiscal Impact Worksheet.

Section 319: Uniform Rules for Remittance of Funds

*Each member state shall require only one remittance for each return.*

Maine must require only one remittance for each return. The Agreement continues to provide member states with the option of requiring remittances from Model 1, 2 & 3 sellers be made electronically, allow for electronic payments, provide for an alternative method for making “same day” payments if electronic funds transfers fail and provide for next business day payment when due date falls on a legal banking holiday. This section would prevent member states from requiring estimated payments at the end of the current month, for instance, along with final payment due with the return on the 20<sup>th</sup> of the following month.

Maine currently meets all these requirements so no changes to the statute are needed to conform to the Agreement.

Section 320: Uniform Rules for Recovery of Bad Debts

*Each member state shall use uniform rules to provide a deduction for bad debts to a seller.*

This section provides uniform rules for providing bad debt deductions to a seller. Among other things, the Agreement requires that the federal definition of bad debt must be utilized and that a CSP must be allowed to take credit on behalf of seller.

Maine does provide for bad debt deductions but it is not currently tied into the federal definition. Administratively we require that the bad debt be written off on the return after the federal return is filed. It appears that the Agreement supports writing off the bad debt sooner: in the period where the taxpayer has determined the debt is uncollectible in the claimant’s books and records and is eligible to be deducted for federal income tax purposes.

The proposal includes a provision to address this issue. See §1811-A. There is a nominal loss associated with this issue. See Item 5 on the Fiscal Impact Worksheet.

Section 321: Confidentiality and Privacy Protections under Model 1.

*Each member state must have a policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with Model 1 sellers.*

A Model 1 seller is a seller who has selected a CSP as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases. The Agreement emphasizes the importance of protecting the confidentiality of taxpayer information by the seller and the CSP. It also provides that the member states are to provide public information to consumers of the state’s practices relating to the collection, use and retention of personally identifiable information and rights of the taxpayer.

Title 36 contains a confidentiality provision. Many of the issues are currently addressed in statute. Minor modifications are needed. See §191(3-B)

Section 322: Sales Tax Holidays

*If a member state allows for temporary exemption periods, the member state shall not apply an exemption after December 31, 2004 unless the items to be exempted are specifically defined in the Agreement and the exemptions are uniformly applied to the state and local sales and use taxes.*

This section establishes rules in the event a member state allows for a sales tax holiday. Member states agree not to exempt items unless the product is defined in the Agreement. If price thresholds are used, the member state can only exempt items priced below the threshold. No exemptions are allowed for a portion of the sale price of an item.

Maine has never had a sales tax holiday for any item. If legislation was to be considered in the future, the Agreement provides the framework for how it would work as well as limits the items that could be a part of a sales tax holiday to only those products defined in the Agreement, such as school supplies or clothing.

No change to the statute is needed at this time.

Section 323: Caps and Thresholds

*Each member state shall 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, unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.*

This section prevents the application of caps or thresholds on both the state and local rates of sales and use tax. The Agreement excludes from this restriction the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes and any retail sales where the burden of administration has been shifted from the retailer.

Basically, any exemption that is not fully exempt or any sale where the tax amount is capped would be covered under this section. Although Maine does not have any tax cap, Maine does have a variety of exemptions that are not full exemptions:

- the first 750kwh of residential electricity is exempt;
- the sale of fuel and electricity for use in a manufacturing facility is 95% exempt;
- the first 28 days of lodging in a hotel/motel is exempt in certain situations;
- the sale of manufactured housing is typically 50% exempt; and
- the sale of hybrid vehicles could be as much as 50% in some cases.

The proposal contains the following:

- Since manufactured housing and motor vehicles are excluded from this section, there are no changes to those exemptions.
- Since a separate rate of tax can apply to electricity and fuels, the rate of .25% is being applied to 100% of the sale price of fuel and electricity for use in a manufacturing facility rather providing a 95% exemption. See §§ 1811 and 1760 (9-D).
- Residential electricity is exempted totally. See §1760 (9-B).

- Since sales tax on transient rentals is being moved to another tax type, the 28 day exclusion will continue to apply under that statute. See §§ 1760 (20) and 4850.

Exempting all residential electricity results in a loss in revenue. See item 15 of the Fiscal Impact Worksheet. See item 16 regarding industrial energy.

Section 324: Rounding Rule

*Each member state shall adopt a rounding algorithm that is carried to the third decimal place and rounded to the next whole cent when the third place decimal is greater than 4.*

The section addresses a common rounding algorithm to be used by all states. The Agreement prevents the use of a bracket system, like the one that Maine has been using. This rounding algorithm is a more common rounding approach. For instance, if a sale amounts to \$34.45, the tax is computed to be \$1.722. Since the third decimal point is less than 4 the tax is \$1.72. (Maine's current bracket system would apply \$1.73 to this transaction.) Member states must also allow sellers to elect to compute tax on an item or an invoice basis.

The proposal conforms to the Agreement. See §1812 (1) and (2).

Section 325: Customer Refund Procedures

*For member states that allow a purchaser to seek refunds directly from the state arising out of sales or use taxes collected in error by a seller, no cause of action against the seller for the over-collected tax will accrue until the purchaser has provided a written notice to the seller and has provided the seller 60 days to respond.*

This section addresses as a first course of remedy procedures for a purchaser to seek a refund of over-collected tax from the seller. The purchaser must provide a written notice to the seller and give the seller 60 days to respond. Presumably if the seller refuses or does not respond, then the purchaser can seek the refund directly from the state. To put this another way, if a purchaser seeks a refund directly from the state, the state can require the purchaser to go to the seller first.

Like the Agreement, Maine's current procedure is for the purchaser to go to seller first, but there is nothing in statute or rule that addresses this. Also there is nothing in current procedure to dictate a seller's response time.

An amendment is needed to the statute to be in compliance with the Agreement. See §1814 (4)

Section 326: Direct Pay Permits

*Each member state shall provide for a 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 section allows certain purchasers (as determined by the state) to purchase their goods and services tax free and be accountable directly to the state for reporting the appropriate use tax. Maine does provide, by rule rather than statute, for direct pay authority for those engaged in manufacturing or utilities.

The proposal places the direct pay authority in the statute. See §1966.

Section 327: Library of Definitions

*Each member state shall utilize common definitions as provided in the Agreement.*

Most of the definitions are set out in the Library of Definitions in Appendix C of the Agreement. Member states are to enact or adopt these definitions whenever such a term is found in their statute and not adopt definitions that are contrary to the meaning in the Library of Definitions. As noted above, the Agreement requires that each member state either impose a tax on all the products or services included in each definition, or exempt from tax all products or services included within the definition.

To summarize, if any term in Maine's statute is defined in the Agreement, Maine must adopt the Agreement's version. If Maine has an exemption for a product defined in the Agreement, the exemption must apply to the entire defined product. For instance, "sale price" is in our statute and is a defined term in the Agreement. To conform to the Agreement, Maine would need to adopt the Agreement's definition of "sale price". Maine exempts "grocery staples" which by definition contains items defined in the Agreement as "food and food products". We would need to adopt the Agreement's definition of food and food products and exempt all items contained in this definition. Maine could not exclude certain food products from this definition and tax them differently.

Some of these definitions do provide states with "toggles"; items that can be included or excluded from the definition. This allows states to adopt definitions as closely as possible to their existing statutes.

The following are definitions needing to be adopted in order to be in conformity with the Agreement. See §1752.

Bundled Transaction (See Section 330 below.)

Direct mail

Necessary as it relates to sourcing issues regarding direct mail. See §1752 (2-G).

Purchase price

Necessary as it relates to the amount subject to use tax. See §1752 (9-F).

Retail sale or Sale at retail

The Agreement's definition of retail sale means any sale, lease or rental. Lease or rental is also defined. This differs from current statute in that only leases that are in lieu of purchase are considered taxable sales and only leases defined as a taxable service are taxable. This is a major change to Maine's statute but one that would be welcomed as Maine is one of a few states that do not globally tax rentals and leases based on the rental stream. See §1752 (1-D), (10-A), (11), §1811 and §1862.

See Item 7 on the Fiscal Impact Worksheet.

### Lease or rental

Necessary as it relates to the definition of “retail sale”. See §1752 (5-C).

### Sales price

The Agreement’s definition of sale price is also similar to current statute and allows a member state to exclude various terms if they are separately stated on the document given to the purchaser. The proposal retains the inclusions and exclusion as close to the current law as possible. See §1752 (13-B), (14). The one area of major change is with respect to delivery charges.

### Delivery charges

The Agreement defines delivery charges as all charges by the seller for transportation of the property including handling charges. Our current statute does not exempt handling charges and only exempts third party delivery provided certain criteria are met.

Including all delivery charges in the sale price effectively taxes vendor delivery. The alternative is to exclude delivery charges from sale price and effectively exempt all delivery charges including handling charges. The proposal includes the latter and exempts all delivery charges. See §1752 (2-E). See Item 6 on the Fiscal Impact Worksheet.

### Tangible personal property

The Agreement’s definition is so similar that there will be no revenue impact by adopting the definition. See §1752 (17).

### Computer related terms

The Agreement’s definition of prewritten computer software is so similar that there will be no revenue impact by adopting the definition. There are other computer related terms within this definition that will need to be adopted as well in order to be in compliance. See §1752 (1-E), (1-L), (1-M), (5-D), (8-F).

### Food and food ingredients

This definition would replace our current definition of “grocery staples”. It allows a member state to exclude candy, dietary supplements and soft drinks, just as our current law provides, but it is the definitions of these exclusions that differ from our current application of sales tax. The definition of food and food ingredients does not exclude water as our current statute does. Water and ice, as a result, would become exempt. The proposal adopts the definition of food and food ingredients (which would remain exempt) but only excludes dietary supplements (which would remain taxable). See §1760 (3), 1752 (3-B), (3-F). Since water and ice would be exempt as “food and food ingredients”, there would be a loss to revenue. See Item 9 on the Fiscal Impact Worksheet.

### Alcoholic Beverages

The definition is necessary as the term is found within the definition of “food and food ingredients” but it has no revenue impact. See §1752 (1-I).

### Candy

The definition of candy would exclude any preparation containing flour but would include any confection that is in the form of bars, drops or pieces. Conforming to the Agreement would exempt such items as Twix bars but tax fruit snacks. By not excluding candy from the definition of food and food ingredients, all candy would be exempt and no definition for the term is needed in our statute. See Item 10 on the Fiscal Impact Worksheet.

### Dietary supplement

The definition of dietary supplements excludes those that are meal replacements and, as a result, would exempt those that are meal replacements. See §1752 (2-F). A loss to revenue would be realized. See Item 11 on the Fiscal Impact Worksheet.

### Prepared food

This definition differs from our current statute. And it seems that we will not escape the probability that this area of sales tax will remain confusing. Simply put the Agreement's definition would include any food prepared by the same retailer making the sale. If a retailer sells products not prepared by that retailer, those items may not be regarded as prepared food and would then either fall within or out of the definition of "food and food ingredients" as previously discussed. It is probably best to explain this area through example rather than statutory language.

- In a restaurant, all meals would be considered prepared food.
- In a take out food establishment, food prepared by them such as Italian sandwiches, pizza, hamburgers, hot dogs, etc. are considered prepared food. Prepackaged products purchased by them to resell in their store may be considered prepared food if more than 75% of their sales is prepared food and they have made eating utensils available to their customers.
- In a convenience store, pizza, hot dogs and hamburgers prepared by them or heated by them would be considered prepared food. In addition, hot coffee, fountain soft drinks and frozen drinks would be prepared food. Items such as doughnuts or pastries not prepared by the retailer and provided in a self serve area would not be taxable unless eating utensils are physically provided by the retailer to the customer.
- In a grocery store, rotisserie chicken, chicken pieces, meatballs, soups and other hot foods would be considered prepared food. The salad bar area may be prepared food depending if the food was prepared by the retailer or if eating utensils are physically provided by the retailer.
- In bakeries, including bakery departments in grocery stores, all food prepared by them such as cakes, pies, breads, pastries, bagels, cookies, etc. would be considered prepared food. However, the Agreement does allow member states to treat bakery items differently than prepared food, but not differently than how it is taxed as a "food and food ingredient". The proposal exempts all bakery items. The alternative is to tax all bakery items, but this position would also tax bread, rolls, buns, croissants, etc. whether or not prepared by the retailer.

See §1752 (8-A), (8-D).

A nominal loss in revenue is associated with sandwiches sold by a retailer but prepared by a different retailer. See item 12 on the Fiscal Impact Worksheet. A nominal loss is also associated with certain single serve items commonly found in a self serve area of a convenience store. See item 13 on the Fiscal Impact Worksheet. Exempting all bakery items results in a loss in revenue. See item 14 on the Fiscal Impact Worksheet.

#### Soft drinks

The definition of soft drinks is any non-alcoholic, non-dairy product containing less than 51% fruit or vegetable juice. Conforming to the Agreement would tax such items as Gatorade and many juice beverages. By not excluding soft drinks from the definition of food and food ingredients, all soft drinks would be exempt and no definition for the term is needed in our statute. See Item 8 on the Fiscal Impact Worksheet.

#### Tobacco

The definition is necessary as the term is found within the definition of “food and food ingredients” but has no revenue impact. See §1752 (19-A).

#### Mobility enhancing equipment

The Agreement’s definition is broader than our current statute which only exempts wheelchairs and crutches. It would include such items as chair lifts in stairways, and modifications to motor vehicles such as wheelchair lifts, higher roofs and driving aids. There are no options in this definition. The proposal provides an exemption for all items within this category. See §1760 (88) and 1752 (6-C). This changes results in a loss of tax revenue. See Item 4 on the Fiscal Impact Worksheet.

#### Over-the-counter drug; Drug; and Prescription

The Agreement’s definition is so similar that there will be no revenue impact by adopting the definition. See §1760 (5) and 1752 (2-H), (8-E).

#### Prosthetic device

The Agreement’s definition is so similar that there will be no revenue impact by adopting the definition. See §1760 (5A) and 1752 (9-E).

#### A variety of Telecommunications related terms

The proposal adopts the necessary terms in order to keep the taxation of telecommunications services as close to current as possible thus resulting in no revenue impact. See §1752 (8-B), (8-C), and sub-sections within §§2551, 2552, 2556, 2556-A and 2557.

#### Section 328: Taxability Matrix

*Each member state shall complete and maintain a taxability matrix database.*

This section establishes a taxability matrix as adopted by the governing board. Simply, this would be a database of the defined products in the Agreement and an indication of whether each state taxes or exempts the product. This database could then be used by sellers and CSPs to determine the proper tax in each state. Maine would make entries to this matrix and notify the

governing board of any future changes. Sellers and CSPs will be relieved from any additional tax liability when relying on this matrix.

Although nothing is needed in the statute to address the need for the matrix, the proposal does include a provision to hold a seller harmless when relying on the information contained in the matrix. See §1766.

Section 329: Effective Date for Rate Changes

*Each member state shall provide that the effective date of a rate change for taxable services covering a period starting before and ending after the statutory effective date shall be the first billing period starting on or after the effective date, for rate increases, and bills rendered on or after the effective date, for a rate decrease.*

This section addresses those services where a billing period straddles a statutory effective date, such as a telephone bill, cable bill or utility bill and provides that all member states apply the same effective date. As an example, if a telephone bill covered a period of 6/20/xx to 7/19/xx and the sales tax rate increased from 5% to 6% on 7/1/xx, the date on which the 6% would apply would be the next billing period. If the rate had decreased from 5% to 4%, the rate would be effective for this billing period.

This same approach has been used in Maine before on rate changes. The proposal addresses this issue. See §1812 (4).

Section 330: Bundled Transactions

*Each member state shall adopt the core definition for a “bundled transaction”.*

This is a new section adopted since the first agreement and needs only be effective on or after January 1, 2008. It requires the member state to adopt the definition of bundled transaction but does not restrict how the state treats a bundled transaction for sales tax purposes. However, for certain telecommunications services, the Agreement does specify how the bundled transaction is to be handled.

The proposal addresses this issue despite the future effective date. See §1752 (1-J).

Other sections of the Agreement not reviewed in detail in this document deal with:

- The purpose and principal of the Agreement (Article I)
- Definitions within Agreement (Article II)
- Registration of sellers (Article IV) See §1756.
- Certification of service providers and automated systems (Article V)
- Monetary allowances for new technological models for sales tax collection (Article VI) See §113 (4)
- Agreement organization (Article VII)
- State entry into and withdrawal from the Agreement (Article VIII)
- Procedures for making amendments to the Agreement (Article IX)
- Process for issue resolutions (Article X)

- Relationship of Agreement to member states and persons (Article XI) and
- Review of costs and benefits associated with the system (Article XII).

### Summary

The Project has succeeded in improving sales and use tax administration systems for both Main Street and remote sellers. Although one of the Project's main goals was to simplify the process for remote sellers, the bricks-and-mortar stores within Maine would also benefit if we conformed to the Agreement.

- Registration of remote sellers will even the playing field for bricks-and-mortar stores. As remote sellers begin applying Maine sales tax to sales to Maine residents, there will be a lesser incentive for the resident to purchase from the remote seller and make their purchases locally in Maine.
- The rounding algorithm will be easier for retailers to compute tax and make changes to their POS equipment. Applying Maine's current bracket system to an electronic cash register requires additional computer programming whereas the Agreement's algorithm is the standard.
- Retailers will receive the benefit of added time to file and pay their sales tax returns with the due date changing to the 20<sup>th</sup> of the month.
- The requirement that we create an online registration process will make it easier for all retailers to register.
- A relaxed hold harmless approach to acceptance of exempt sale documentation will relieve the retailer in most cases from future assessment of tax when the purchaser has misused an exemption document.
- Digital goods, computer software and direct mail purchased in Maine but used in multiple states will be taxable where used rather than all to Maine.
- Common definitions and common administrative practices across all states will make it easier for Maine retailers to expand their market to other states and administer the sales taxes of those states.

Consumers will benefit from our conformity to the Agreement.

- Adopting many of the definitions provides additional tax relief to Maine residents. The following items would all become exempt from sales tax:
  - All delivery charges, including handling charges
  - Mobility enhancing equipment, such as chair lifts, wheelchair lifts and motor vehicle modifications in addition to wheelchairs and canes.
  - All candy and soft drinks
  - Dietary substitutes that are meal replacements
  - Bottled water and ice
  - All bakery items
  - All residential electricity
- The rounding algorithm will impose a lesser tax on the consumer.

Maine will benefit from our conformity to the Agreement.

- Registration of remote sellers will increase revenue to the State
- Common definitions and common administrative practices across all states will ease the administration of the sales tax
- Maine's participation in this endeavor will be received by business and consumers as the State's willingness to be a part of a group of unified states attempting to make it easier for business, small and large alike, to administer the sales and use tax laws.

We are not suggesting that such an endeavor does not have its drawbacks.

- Maine must conform to certain administrative practices as outlined in the Agreement
  - These practices however have been positive in nature and primarily benefit the retailer and consumer.
- Maine must conform to certain definitions
  - Some definitions provide flexibility in the form of "toggles" or "inclusions/exclusions". The proposal takes advantage of these toggles as much as possible to minimize any negative impacts.
  - Other definitions do not provide any flexibility. But again these primarily took the form of benefits to the retailer and/or consumer.
  - Maine, as part of the governing states, would retain its ability to propose amendments to the Agreement in the event future legislators wish to make changes.

The Agreement should not be construed as limiting the ability for the Maine legislature to tax. It simply provides a framework around certain defined areas where all states agree to be consistent. For instance, all states agree that if a state wishes to exempt clothing, it can, but it must apply the exemption to all clothing, not a segment of clothing or a particular piece of clothing.

The Agreement took effect on October 1, 2005 as 18 states were found to be substantially in compliance.<sup>4</sup> Other states continue to proceed in amending their statutes. Maine is not alone nor one of the first states to embark on this quest. We believe that the proposal is best viewed as a total package. The retailer, the consumer and the State all realize a benefit in our conforming to the Agreement. The proposal takes the position of no negative impacts. The legislature may decide to switch some of the "toggles" in the proposal, but any such decision will have a fiscal impact. The legislature should also realize that there are areas where changes cannot be made to the proposal without jeopardizing conformity with the Agreement.

Included in this package are the following additional pieces of information:

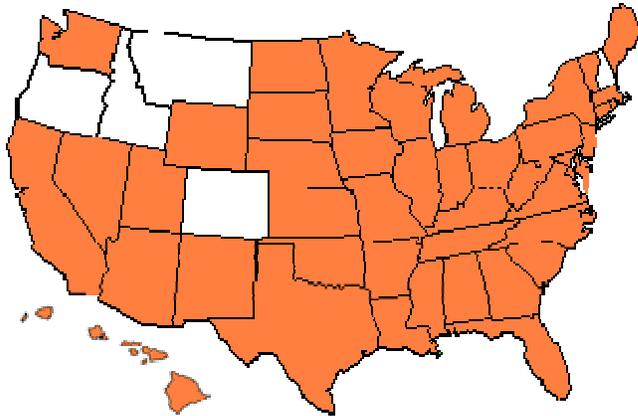
- Tab A - Map and listing of participating states
- Tab B - State Legislative Status of Streamlined Sales and Use Tax Agreement (as of February 21, 2005)
- Tab C - Streamlined Sales and Use Tax Agreement
- Tab D - Proposed legislation to bring Maine into conformity with the Agreement
- Tab E - Fiscal impact of the proposal

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<sup>4</sup> See "Status of SSTP" within this document for a listing of these states.

- Alabama
- Arizona
- Arkansas
- California
- Connecticut
- District of Columbia
- Florida
- Georgia
- Hawaii
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Nebraska
- New Jersey
- New Mexico
- New York
- Nevada
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming

## Participating States



Other states represented in the Project are "Observer States".

**Note:** Since the publication of this web page, Idaho is now a participating state.

## State Legislative Status of Streamlined Sales and Use Tax Agreement (As of February 21, 2005)

In early 2000, representatives of state government and the business community formed the Streamlined Sales Tax Project (SSTP) to develop measures to design, test and implement a sales and use tax system that radically simplifies sales and use taxes. On November 12, 2002, 34 states and the District of Columbia involved in the Streamlined Sales Tax Implementing States (SSTIS) process approved the Streamlined Sales and Use Tax Agreement based upon recommendations put forth by the SSTP. In early 2003, state legislatures began the process of introducing legislation aimed at conforming their state sales and use tax statutes to the Agreement. The Agreement goes into effect when 10 states comprising at least 20 percent of the population of states imposing a sales tax have come into compliance. However, collection by sellers of sales and use taxes on remote sales remains voluntary under the Agreement until either Congress or the Supreme Court acts to make this collection mandatory.

State in compliance with SSTIS	State participated in the negotiations of the SSTIS	State is a Participating State in the SSTP	State does not impose sales tax	
State	Bill Number(s) and Sponsors	Legislative Status	Intent of Legislation	Effective Date
Alabama	HB 694 introduced by Rep. Graham.		Legislation brings state into compliance with the SSTIS Agreement.	
Alaska	HB 293 introduced in the House.		Legislation establishes a state sales tax and brings the state into compliance with the SSTIS Agreement.	
Arizona				
Arkansas	SB 483 introduced by members of the Senate Finance and Taxation Committee on 02/28/03.	SB 483 signed into law by Gov. Huckabee on 04/11/03.	Legislation would conform the state's sales and use tax statutes to the SSTIS Agreement.	
California	SB 157 introduced by Sen. Bowen on 02/11/03.	SB 157 approved by Senate on 06/05/03; approved by Assembly on 09/08/03; signed into law on 10/09/03.	Legislation would make California a participating state in the SSTIS.	
Colorado				
Connecticut	SB 328, introduced by Sen. Crisco on 01/21/03.	Legislation referred to Joint Committee on Finance and Revenue.	Legislation endorses the SSTIS Agreement.	
Delaware	NO SALES TAX			

State	Bill Number(s) and Sponsors	Legislative Status	Intent of Legislation	Effective Date
District of Columbia		The District of Columbia City Council passed a resolution in 2002 to bring the majority of the city's sales tax statutes into compliance with the terms of the SSTIS Agreement.		
Florida	SB 56 introduced by Sen. Campbell HB 607 introduced by Rep. Stargel	A committee substitute for SB 56 was adopted by the Senate Committee on Government Efficiency Appropriations on 1-27-05. SB 56 also has been returned to the Committee on Commerce and Consumer Services and Committee on Ways and Means.  HB 607 has been referred to Finance and Tax Committee; the Economic Development, Trade and Banking Committee; and the Fiscal Council.	Legislation brings the state into compliance with the SSTIS Agreement.	January 1, 2006
Georgia	HB 1437 introduced by Rep. Royal.	HB 1437 signed into law by Governor Perdue.	Legislation would make Georgia a Participating State in the SSTP.	
Hawaii	HB 1226 (introduced by Rep. Say on 01/23/03) and SB 1397 (introduced by Sen. Bunda on 01/22/03).	Legislation signed into law by Gov. Lingle on 06/16/03.	Legislation allows Hawaii to become a member of the SSTIS.	July 1, 2003
Idaho	S 1193 was introduced in the Idaho Senate on 04/24/03.	S 1193 referred to Senate Local Government and Taxation Committee but failed to win approval by the Committee on 05/02/03.	Legislation authorizes the Tax Commission to enter into the SSTIS Agreement and make the proposed statutory changes to the state's laws.	
Illinois	SB 631 introduced by Sens. Welch and Rauschenberger; HB 848, 849, 850, 851 introduced by Reps. Madigan and Currie	SB 631 approved by Senate on 03/25/03; House measures approved on 04/03/03.	Legislation will bring state into compliance with the SSTIS Agreement.	
Indiana	SB 465 (introduced by Sen. Borst and sponsored by Rep. Welch); HB 1815 introduced by Rep. Crawford and sponsored by Sen. Borst.	HB 1815 signed into law by Governor O'Bannon on 05/08/03.	Legislation amends current Indiana statutes to conform the state's laws to the SSTIS Agreement.	January 1, 2004
Iowa	SB 1200 introduced by Sen. McKibben.	House and Senate concurred on conforming legislation during special session; legislation sent to Gov. Vilsack for signature.	Legislation would bring state into compliance with the SSTIS Agreement.	July 1, 2004

State	Bill Number(s) and Sponsors	Legislative Status	Intent of Legislation	Effective Date
Kansas	HB 2005 effective 7-1-03. House substitute for SB 147 allowed retailers to use either destination sourcing or origin sourcing through 12-31-04.	Legislation signed into law by Gov. Sebelius on 05/21/03.	Legislation brings the state into compliance with the SSTIS Agreement.	July 1, 2003 and January 1, 2005
Kentucky	HB 293 introduced by Reps. Moberly and Belcher introduced on 01-07-03.	HR 293 signed by Gov. Patton on 03/18/03.	Conforms Kentucky statutes to the SSTIS Agreement. Legislation also provides for a sales tax holiday in August 2003.	July 1, 2004
Louisiana	SB 551, SB 674, SB 708, SB719 introduced by Sen. Jones.	Legislation approved by Senate on 05/01/03; legislation now pending in the House.	Legislation would bring some uniformity to the tax laws of local jurisdictions; some state conformity measures included to bring state into compliance with the SSTIS Agreement.	
Maine	HB 552 introduced by Rep. Lemoine on 02/14/03.	HB 552 referred to Committee on Taxation on 02/14/03.	Legislation would bring state into compliance with the SSTIS Agreement.	
Maryland	HB 694 introduced by Del. Hixson; SB 400 introduced by Del. Hogan.	HB 694 signed into law on 05/25/04.	Legislation would bring state into compliance with SSTIS Agreement pending action by Congress to grant collection authority.	
Massachusetts	SB 1949 introduced to make the state an Implementing State.	SB 1949 approved by the legislature on 03/05/03.	Legislation would make state a member of the SSTIS.	
Michigan	HB 5502, HB 5503, HB 5504, and HB 5505 were introduced in the House on 02/10/04 with bi-partisan support.	Gov. Granholm signed HB 5502, 5503, 5504, and 5505 into law on 06/28/04.	Legislation brings state into compliance with the SSTIS Agreement.	September 1, 2004
Minnesota	SF1007, SF 1008, HR 1463, HF 1597 and SF1505	SF 1505 signed into law by Gov. Pawlenty on 05/29/03.	Legislation brings Minnesota into compliance with the SSTIS Agreement.	January 1, 2004
Mississippi	SB 2089 introduced on 01/24/03.	Passed by both the House and Senate on 03/08/03 and signed into law by Gov. Musgrove.	Legislation would make Mississippi a member of the SSTIS.	
Missouri	SB 830 introduced by Sen. Bray.	SB 830 has received a second reading in the Senate, but a hearing has not yet been held.	SB 830 would bring the state into compliance with the SSTIS Agreement.	August 28, 2004

State	Bill Number(s) and Sponsors	Legislative Status	Intent of Legislation	Effective Date
Montana	NO SALES TAX SB 470 introduced by Sen. Mangan.	SB 470 referred to the Committee on Taxation and is scheduled for a hearing on 03/06/03.	SB 224 would enact a 4 percent sales and use tax, permit certain sales and use tax exemptions, and recommends that state enter into the SSTIS Agreement.	
Nebraska	LB 282 introduced by Sen. Landis on 01/13/03.	LB 282 signed by Gov. Johanns on 05/06/03.	Legislation would bring state's laws into compliance with the SSTIS Agreement.	January 1, 2004
Nevada	AB 514 introduced by Committee on Taxation.	AB 514 signed into law by Gov. Guinn on 06/09/03.	Legislation brings state's laws into compliance with the SSTIS Agreement.	July 1, 2003
New Hampshire	NO SALES TAX			
New Jersey	Bills S 1958 introduced in the Senate, 10-14-04, Sponsors Senators Bryant and Buono.  A 3473 introduced in the Assembly, 11-4-04, Sponsors Greenwald and Watson-Coleman.  Referred to the Assembly Appropriations Committee.		Bring state into compliance with SSTIS Agreement.	Depends on date of enactment but not before July 1, 2005
New Mexico	HB 891 introduced by Rep. Taylor.		Legislation conforms local sales taxes to SSTIS Agreement.	
New York	S 1406-BIA.2106-B (Budget) of the Laws of 2003.	Enacted on 5-15-03 as part S3 of Chapter 62.	Legislation made the state a member of the SSTIS.	May 15, 2003
North Carolina	SB 99 introduced by Sen. Kerr; HB 44 introduced by Rep. Luebke.	HB 397, which added additional language necessary to bring state into compliance with the SSTIS agreement, signed into law by Gov. Easley on 06/30/03.	Legislation would make changes to state's statutes to bring state into full compliance with the SSTIS Agreement. North Carolina enacted legislation in 2002 to adopt most of the provisions of the SSTIS Agreement.	
North Dakota	SB 2095 and SB 2096 introduced on 01/07/03 by Sen. Cook.	SB 2095 and SB 2096 signed by Gov. Hoeven on 04/08/03.	Legislation would bring state's laws into compliance with the SSTIS Agreement.	December 31, 2005
Ohio		HB 95, which includes language to bring Ohio into compliance with the SSTIS Agreement, signed into law by Gov. Taft on 06/26/03.		January 1, 2005

State	Bill Number(s) and Sponsors	Legislative Status	Intent of Legislation	Effective Date
Oklahoma	HB1712 introduced on 02/04/03 by Rep. Pope; SB 708 introduced by Sen. Monson on 02/04/03.	SB 708 signed into law by Gov. Henry on 06/05/03.	Legislation amends statutes and brings Oklahoma into compliance with the SSTIS Agreement.	November 1, 2003
Oregon	NO SALES TAX HB 3500 and HB 3608 introduced by Rep. Hansen and Revenue Committee.	Hearing held on HB 3500 on 04/11/03.	Legislation would establish a sales tax system and bring the state into compliance with the SSTIS Agreement.	
Pennsylvania				
Rhode Island South Carolina				
South Dakota	SB 76 introduced on 01/24/03 by the Committee on State Affairs.	SB 76 signed into law by Gov. Rounds on 03/06/03.	Legislation brings the state into compliance with the terms of the SSTIS Agreement.	January 1, 2004
Tennessee	SB 899 introduced by Sen. Clabough; HB 823 introduced by Rep. Head.	SB 899 signed by Gov. Bredeson on 06/16/03.	Legislation brings state into compliance with SSTIS Agreement.	
Texas	SB 823 introduced by Sens. Fraser and VandePutte; HB 3143 introduced by Rep. Wilson.	HB 2425 signed by Gov. Perry on 06/20/03.	Legislation adopts certain provisions of the SSTIS Agreement, including but not limited to the definitions for prepared food, sourcing of telecommunication services, and providing destination based sourcing for other taxable services.	Several provisions effective on 10-1-03; Implementation of 7-1-04 change to source taxable services on a destination basis is being delayed.
Utah	SB 147 introduced on 02/03/03 by Sen. Hillyard.	Gov. Leavitt signed SB 147 into law on 03/24/03.	Legislation would bring state into compliance with the SSTIS Agreement.	January 1, 2004
Vermont	HB 480 introduced and referred to Appropriations Committee.	HB 480 signed by Gov. Douglas on 06/18/03.	Legislation would bring state into compliance with the SSTIS Agreement.	
Virginia	SB 1135 introduced in 2005 by Senator Emmettt Hanger.	Reported out of Senate Finance Committee on 1-25-05. Engrossed on the Senate floor on 1-27-05. Sent back to Senate Finance Committee on 2-2-05.	Conform to SSTIS Agreement, except for sourcing.	

State	Bill Number(s) and Sponsors	Legislative Status	Intent of Legislation	Effective Date
Washington	<p>SB 5783 introduced by Sen. Finkbeiner on 02/12/03; HB 1863 introduced by Rep. Gombosky on 02/12/03.</p> <p>HB 2500 and SB 6544 introduced in 02/04 by Rep. McIntire and Sen. Winsley, et al. respectively; HB 2501 and SB 6515 introduced by Rep. Hunter, et al. and Sens. Zarelli, et al. respectively.</p>	<p>Legislation signed into law by Gov. Locke on 05/12/03.</p> <p>HB 2500 has passed out of House Finance Committee; SB. 6544 has been referred to the Senate Ways and Means Committee; HB 2501 passed the House 93-0; SB 6515 currently pending before Senate Ways and Means Committee.</p>	<p>Legislation bring majority of state's statutes into compliance with the Agreement.</p> <p>HB 2500 and SB 6544 contain sourcing and amnesty provisions to bring the state into compliance with the SSTIS Agreement. HB 2501 and SB 6515 make technical changes in the definition of food.</p>	
West Virginia	<p>HB 3014 was introduced in 2003. (HB 4349—to make several technical corrections to HB 3014--was introduced in January 2004, and approved by the legislature on 02/24/04.</p>	<p>HB 3014 signed into law by Gov. Wise on 03/14/03.</p>	<p>Legislation authorizes the Revenue Commissioner to enter the state into the Agreement and make any changes to the state's statutes to conform to the Agreement.</p>	January 1, 2004
Wisconsin	<p>2005 AB 100 introduced on 2-9-05 by Joint Committee on Finance, at request of Governor Doyle. Also forwarded to Joint Survey Committee on Tax Exemptions.</p>		<p>Legislation will bring the state into compliance with the SSTIS Agreement</p>	October 1, 2005
Wyoming		<p>Wyoming enacted legislation in 2002 to bring the state into compliance with the SSTIS.</p>		

Hyperlink to document “State Legislative Status of Streamlined Sales and Use Tax Agreement as of Feb. 21, 2005”

<http://streamlinedsalestax.org/statestatus.pdf>

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Link to SSTP Agreement  
<http://streamlinedsalestax.org/Final%20Agreement%20As%20Amended%2010-1-05.pdf>

# **STREAMLINED SALES AND USE TAX AGREEMENT**

**Adopted November 12, 2002**

**(Amended November 19, 2003, November 16, 2004, April 16, 2005, and  
October 1, 2005)**

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**ARTICLE I**  
**PURPOSE AND PRINCIPLE**

**Section 101: TITLE**

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

**Section 102: FUNDAMENTAL PURPOSE**

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

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

**Section 103: TAXING AUTHORITY PRESERVED**

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

#### **Section 104: DEFINED TERMS**

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

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

#### **Section 105: TREATMENT OF VENDING MACHINES**

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

**ARTICLE II**  
**DEFINITIONS**

The following definitions apply in this Agreement:

**Section 201: AGENT**

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

**Section 202: CERTIFIED AUTOMATED SYSTEM (CAS)**

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

**Section 203: CERTIFIED SERVICE PROVIDER (CSP)**

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

**Section 204: ENTITY-BASED EXEMPTION**

An exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

*Compiler's note: On October 1, 2005 Section 204 was amended by adding the second sentence. Each member state shall comply with the October 1, 2005 amendment to this section no later than January 1, 2008.*

**Section 205: MODEL 1 SELLER**

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

**Section 206: MODEL 2 SELLER**

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

**Section 207: MODEL 3 SELLER**

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

**Section 208: PERSON**

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

**Section 209: PRODUCT-BASED EXEMPTION**

An 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.

**Section 210: PURCHASER**

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

**Section 211: REGISTERED UNDER THIS AGREEMENT**

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

**Section 212: SELLER**

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

**Section 213: STATE**

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

**Section 214: USE-BASED EXEMPTION**

An exemption based on a specified use of the product by the purchaser.

*Compiler's note: On October 1, 2005 Section 214 was amended as follows: "An exemption based on a specified use of the product by the purchaser's use of the product." Each member state shall comply with the October 1, 2005 amendment to this section no later than January 1, 2008.*

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

**Section 301: STATE LEVEL ADMINISTRATION**

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.

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

Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. 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.

**Section 303: SELLER REGISTRATION**

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

- A. A seller registering under the Agreement is registered in each of the member states.
- B. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.
- C. A written signature from the seller is not required.
- D. An agent may register a seller under uniform procedures adopted by the member states.
- E. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

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

- A. 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.
- B. Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.

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

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.
- 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.
- D. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.
- E. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the governing board.
- F. Provide and maintain a database that assigns each five digit and nine digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined

tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller has attempted to determine the nine digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five digit zip code applicable to a purchase.

- G. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (F) of this section. The database records must be in the same approved format as the database records pursuant to subsection (F) of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119(a)). The governing board may allow a member state to require sellers that register under this Agreement to use an address-based database provided by that member state. If any member state develops address-based assignment database records pursuant to the Agreement, a seller or CSP may use those database records in place of the five and nine-digit zip code database records provided for in subsection (F) of this section. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may apply the nine digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.
- H. States that have met the requirements of subsection (F) may also elect to certify vendor provided address-based databases for assigning tax rates and jurisdictions. The databases must be in the same approved format as the database records pursuant to (G) of this section and must meet the requirements developed pursuant to the federal Mobil Telecommunications Sourcing Act (4

U.S.C.A. Sec. 119 (a)). If a state certifies a vendor address-based database, a seller or CSP may use that database in place of the database provided for in subsection (F) or (G) of this section. Vendors providing address-based databases may request certification of their databases from the governing board. Certification by the governing board does not replace the requirement that the databases be certified by the states individually.

*Compiler's note: On October 1, 2005 the following amendments were made to Section 305:*

1. In Section 305 (F) "or CSP" was added after each "seller." In addition, in two places "~~of a purchaser~~" was replaced with "applicable to a purchase."
2. Section 305 (G) was amended as follows: "~~Participate with other member states in the development of an~~ Have the option of providing address-based ~~system~~ database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (F) of this section. The ~~system~~ database records must be in the same approved format as the database records pursuant to subsection (F) of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sec. 119) (4 U.S.C.A. Sec.119 (a)). The governing board may allow a member state to require sellers that register under this Agreement to use an address-based ~~system~~ database provided by that member state. If any member state develops an address-based assignment ~~system~~ database records pursuant to the ~~Mobile Telecommunications Sourcing Act Agreement~~, a seller or CSP may use ~~that system~~ those database records in place of the ~~system~~ five and nine-digit zip code database records provided for in subsection (F) of this section. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may apply the nine digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.
3. Section 305 (H) was added.

*The amendment to this section became effective upon adoption.*

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

Each member state shall relieve sellers and CSPs using databases pursuant to subsections (F), (G) and (H) of Section 305 from liability to the member state and 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 a member state on tax rates, boundaries, or taxing jurisdiction assignments. After

providing adequate notice as determined by the governing board, a member state that provides an address-based database for assigning taxing jurisdictions pursuant to Section 305, subsection (G) or (H) may cease providing liability relief for errors resulting from the reliance on the database provided by the member state under the provisions of Section 305, subsection (F). If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, a member state and the governing board may extend the relief from liability to such seller for a designated period of time.

*Compiler's note: On October 1, 2005 Section 306 was amended as follows: "Each member state shall relieve sellers and CSPs using databases pursuant to subsections (F), (G) and (H) from liability to the member state and 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 a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a ~~A~~ member state that provides an address-based ~~system~~ database for assigning taxing jurisdictions pursuant to Section 305, subsection (G) ~~or pursuant to the federal Mobile Telecommunications Sourcing Act will not be required to provide~~ or (H) may cease providing liability relief for errors resulting from the reliance on the ~~information~~ database provided by the member state under the provisions of Section 305, subsection (F). If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, a member state and the governing board may extend the relief from liability to such seller for a designated period of time."*

*The amendment to this section became effective upon adoption.*

### **Section 307: DATABASE REQUIREMENTS AND EXCEPTIONS**

- A. The electronic databases provided for in Section 305, subsections (D), (E), (F), and (G) shall be in a downloadable format approved by the governing board. The databases may be directly provided by the state or provided by a vendor as designated by the state. A database provided by a vendor as designated by a state shall be applicable to and subject to all provisions of Sections 305, 306 and this section. These databases must be provided at no cost to the user of the database.
- B. The provisions of Section 305, subsections (F) and (G) do not apply when the purchased product is received by the purchaser at the business location of the seller.
- C. The databases provided by Section 305, subsections (D), (E), (F), and (G) are not a requirement of a state prior to entering into the Agreement. 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 databases required by Section 305,

subsections (D), (E), and (F). Provided, for the initial implementation of the Agreement pursuant to Section 701, a CSP shall be required to collect sales or use taxes for each member state, subject to the provisions of Section 705, pursuant to the terms of the operating agreement entered into between the CSP and the governing board in order to provide adequate time for testing and loading of the databases.

*Compiler's note: On October 1, 2005 the following amendments were made to Section 307:*

1. Section 307 (A) was amended by adding the last three sentences.
2. Section 307 (C) was amended by adding "and (G)" after "(F)," deleting the second sentence (~~The governing board shall establish the effective dates for availability and use of the databases.~~) and adding the last two sentences.

*The amendment to this section became effective upon adoption.*

### **Section 308: STATE AND LOCAL TAX RATES**

- 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.

### **Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS FROM THE RULES**

- A. Each member state shall agree to require sellers to source the retail sale of a product in accordance with Section 310. The provisions of Section 310 apply regardless of the characterization of a product as tangible personal property, a digital good, or a service. The provisions of Section 310 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do

not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

- B. Section 310 does not apply to sales or use taxes levied on the following:
1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
  2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in Section 310, subsection (D). The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to Section 310, subsection (C).
  3. Telecommunications services, as set out in Section 315, shall be sourced in accordance with Section 314.
  4. Until December 31, 2007, florist sales as defined by each member state. Prior to this date, these items must be sourced according to the requirements of each member state.

*Compiler's note: On October 1, 2005 Section 308 (B)(4) was amended by deleting 2005 and inserting 2007. The amendment to this section became effective upon adoption.*

### **Section 310: GENERAL SOURCING RULES**

- 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).

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

1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (A). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).
3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (D), shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).
  3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
- D. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (A), notwithstanding the exclusion of lease or rental in subsection (A). "Transportation equipment" means any of the following:
1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.
  2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:
    - a. Registered through the International Registration Plan; and
    - b. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
  3. Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
  4. Containers designed for use on and component parts attached or secured on the items set forth in subsections (D)(1) through (D)(3).

### **Section 311: GENERAL SOURCING DEFINITIONS**

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

- A. Taking possession of tangible personal property,
- B. Making first use of services, or
- C. Taking possession or making first use of digital goods, whichever comes first.

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

### **Section 312: MULTIPLE POINTS OF USE (Effective through December 31, 2007)**

Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered

electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form).

- A. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
- B. A purchaser delivering the MPU Exemption Form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.
- C. The MPU Exemption Form will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principle of subsection (B) and the facts existing at the time of the sale) until it is revoked in writing.
- D. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form to the seller. A direct pay permit holder shall follow the provisions of subsection (B) in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.

**Section 312: MULTIPLE POINTS OF USE (Effective on and after January 1, 2008)**

- A. Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software, or a service that the digital good, computer software, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase an exemption certificate claiming multiple points of use or meet the requirements of Section 312, subsections (B) or (C). Computer software, for purposes of this section includes, but is not limited to computer software delivered electronically, by load and leave, or in tangible form. Computer software received in-person by a business purchaser at a business location of the seller is not included.
  - 1. Upon receipt of an exemption certificate claiming multiple points of use, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

2. A purchaser delivering an exemption certificate claiming multiple points of use may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's books and records as they exist at the time the transaction is reported for sales or use tax purposes.
  3. A purchaser delivering an exemption certificate claiming multiple points of use shall report and pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due will be calculated as if the apportioned amount of the digital good, computer software or service had been delivered to each jurisdiction to which the sale is apportioned pursuant to Section 312, subdivision (A)(2).
  4. The exemption certificate claiming multiple points of use will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principles of Section 312, subdivisions (A)(2) and (A)(3)) until it is revoked in writing.
- B. Notwithstanding Section 312, subsection (A), when the seller knows that the product will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection (A), the seller may work with the purchaser to produce the correct apportionment. The purchaser and seller may use any reasonable, but consistent and uniform, method of apportionment that is supported by the seller's and purchaser's business records as they exist at the time the transaction is reported for sales or use tax purposes. If the purchaser certifies to the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit the tax pursuant to Section 312, subdivision (A)(3). In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the information certified by the purchaser.
- C. When the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate claiming multiple points of use exemption as required in Section 312, subsection (A), or certification pursuant to Section 312, subsection (B), the seller shall collect and remit the tax based on the provisions of Section 310.
- D. A holder of a direct pay permit shall not be required to deliver an exemption certificate claiming multiple points of use to the seller. A direct pay permit holder shall follow the provisions of Section 312 subdivisions (A)(2) and (A)(3) of this section in apportioning the tax due on a digital

good, computer software, or a service that will be concurrently available for use in more than one jurisdiction.

- E. Nothing in this section shall limit a person's obligation for sales or use tax to any state in which the qualifying purchases are concurrently available for use, nor limit a person's ability under local, state, federal, or constitutional law, to claim a credit for sales or use taxes legally due and paid to other jurisdictions.

*Compiler's note: The following amendments were made on April 16, 2005. Each member state shall comply with the April 16, 2005 amendments to this section no later than January 1, 2008.*

- 1) *The first paragraph of Section 312 was numbered 312 (A) and was amended by deleting "delivered electronically" after "computer software" in the first two uses of that term; deleting "a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form)" after "with its purchase"; and inserting the material starting with "an exemption certificate".*
- 2) *The former subsection 312 (A) was renumbered subdivision 312 (A)(1) and was amended by deleting "the MPU Exemption Form" and inserting "an exemption certificate claiming multiple points of use" prior to the first comma.*
- 3) *The former subsection 312 (B) was renumbered subdivision 312 (A)(2) and was amended by deleting "the MPU Exemption Form" and inserting "an exemption certificate claiming multiple points of use" after "delivering"; deleting "business" and inserting "books and" after "the purchaser's"; and deleting "of the consummation of the sale" and inserting "the transaction is reported for sales or use tax purposes" after "at the time".*
- 4) *A new subdivision 312 (A)(3) was added.*
- 5) *The former subsection 312 (C) was renumbered subdivision 312 (A)(4) and amended by deleting "the MPU Exemption Form" and inserting "an exemption certificate claiming multiple points of use" after the first "The"; and deleting "subsection (B) and the facts existing at the time of the sale" and inserting "Section 312, subdivisions (A)(2) and (A)(3)" after "principles" which was made plural.*
- 6) *Subsections (B), (C) and (E) were added.*
- 7) *Subsection (D) was amended by deleting "a MPU Exemption Form" and inserting "an exemption certificate claiming multiple points of use" after "required to deliver"; changing the reference from "subsection (B)" to "Section 312, subdivisions (A)(2) and (A)(3)"; and inserting ",computer software," after "digital good".*

### **Section 313: DIRECT MAIL SOURCING**

- A. Notwithstanding Section 310, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a Direct Mail Form or information to show the jurisdictions to which the direct mail is delivered to recipients.
1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on

a direct pay basis. A Direct Mail Form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

2. Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.
- B. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a Direct Mail Form or delivery information, as required by subsection (A) of this section, the seller shall collect the tax according to Section 310, subsection (A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.
- C. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a Direct Mail Form or delivery information to the seller.

#### **Section 314: TELECOMMUNICATION SOURCING RULE**

- A. Except for the defined telecommunication services in subsection (C), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.
- B. Except for the defined telecommunication services in subsection (C), a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.
- C. The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:
  1. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.
  2. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications

system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. **(Effective through December 31, 2007)** A sale of prepaid calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.
3. **(Effective on and after January 1, 2008)** A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.
4. A sale of a private communication service is sourced as follows:
  - a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.
  - b. Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.
  - c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.
  - d. Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

*Compiler's note: On April 16, 2005 Section 314, subdivision (C)(3) was amended by inserting "or a sale of a prepaid wireless calling service" after "service" in the first line; and by deleting "mobile telecommunications service that is a prepaid telecommunications" and inserting "prepaid wireless calling" in its place. Member states shall comply with this amendment no later than January 1, 2008.*

**Section 315: TELECOMMUNICATION SOURCING DEFINITIONS (Effective through December 31, 2007)**

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

- A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
- B. "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.
- C. "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- D. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
- E. "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.
- F. "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.
- G. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- H. "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- I. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
- J. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism

such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service.

- K. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
- L. "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
- M. "Service address" means:
1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
  2. If the location in subsection (M)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
  3. If the location in subsection (M)(1) and subsection (M)(2) are not known, the service address means the location of the customer's place of primary use.

**Section 315: TELECOMMUNICATION SOURCING DEFINITIONS (Effective on and after January 1, 2008)**

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

- A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

- B. "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.
- C. "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- D. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
- E. "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.
- F. "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.
- G. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- H. "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- I. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
- J. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

- K. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
- L. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.
- M. "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
- N. "Service address" means:
1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
  2. If the location in subsection (N)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
  3. If the location in subsection (N)(1) and subsection (N)(2) are not known, the service address means the location of the customer's place of primary use.

*Compiler's note: On April 16, 2005 Section 315 (J) was amended by inserting " , except a prepaid wireless calling service," after "telecommunications service in the second sentence. The former 315 (L) and (M) were renumbered 315 (M) and (N) and a new Section 315 (L) was inserted. The cross references in 315 (N) were changed to account for the renumbering. Member states shall comply with amendments to this section no later than January 1, 2008.*

### **Section 316: ENACTMENT OF EXEMPTIONS (Effective through December 31, 2007)**

- A. A member state may enact a product-based exemption 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.

- B. A member state may enact an entity-based or a use-based exemption 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.

**Section 316: ENACTMENT OF EXEMPTIONS (Effective on and after January 1, 2008)**

- A. A member state shall enact entity-based, use-based and product-based exemptions in accordance with the provisions of this section and shall utilize common definitions in accordance with the provisions of Section 327 and Library of Definitions in Appendix C of this Agreement.
- B. (1) A member state may enact a product-based exemption without restriction if Part II of the Library of Definitions does not have a definition for such product.  
(2) A member state may enact a product-based exemption for a product if Part II of the Library of Definitions has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with Part II of the Library of Definitions and Section 327 of this Agreement.  
(3) A member state may enact a product-based exemption exempting all items included within a definition in Part II of the Library of Definitions but shall not exempt specific items included within the product definition unless the product definition sets out an exclusion for such item.
- C. (1) A member state may enact an entity-based or a use-based exemption for a product without restriction if Part II of the Library of Definitions does not have a definition for such product.

(2) A member state may enact an entity-based or a use-based exemption for a product if Part II of the Library of Definitions has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with Part II of the Library of Definitions and Section 327 of this Agreement.

(3) A member state may enact an entity-based exemption for an item if Part II of the Library of Definitions does not have a definition for such item but has a definition for a product that includes such item.

(4) A member state may not enact a use-based exemption for an item which effectively constitutes a product-based exemption if Part II of the Library of Definitions has a definition for a product that includes such item.

(5) A member state may enact a use-based exemption for an item if Part II of the Library of Definitions has a definition for a product that includes such item, if not prohibited in Subsection (C) (4) of this section and if consistent with the definition in Part II of the Library of Definitions.

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

*Compiler's note: On October 1, 2005 all of Section 316 was repealed and replaced with the current language. The following language was repealed:*

- A. *A member state may enact a product-based exemption 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.*
- B. *A member state may enact an entity-based or a use-based exemption 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.*

*Each member state shall comply with the October 1, 2005 amendments to this section no later than January 1, 2008.*

## **Section 317: ADMINISTRATION OF EXEMPTIONS**

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.
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.
8. After December 31, 2007, in the case of drop shipment sales, member states must allow a third party vendor (e.g., drop shipper) to claim a resale exemption based on an exemption certificate provided by its customer/re-seller or any other acceptable information available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer/re-seller is registered to collect and remit sales and use tax in the state where the sale is sourced.

**(Effective through December 31, 2007)** 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.

- B. **(Effective on and after January 1, 2008)** Each member state shall relieve sellers that follow the requirements of this section from the 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 tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on the uniform form and posting it on a state's web site is an indicator) that the claimed exemption is not available in that state; or to a seller who accepts an exemption certificate claiming multiple points of use for tangible personal property other than computer software for which an exemption claiming multiple points of use is acceptable under Section 312.
- C. **(Effective on and after January 1, 2008)** Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale.
1. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection (C) the seller may, within 120 days subsequent to a request for substantiation by a member state, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement.
  2. Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.
  3. Notwithstanding the aforementioned, each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. States may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For

purposes of this section a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

*Compiler's note: On April 16, 2005 Subsection (A)(8) was added. Subsection (B) was amended to delete "any" and insert "the" after "from" in the first sentence and by inserting all the material after "claim an exemption" in the second sentence. Subsection (C) was inserted. Each member state shall comply with the April 16, 2005 amendments to this section no later than January 1, 2008.*

### **Section 318: UNIFORM TAX RETURNS**

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.

### **Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS**

Each member state shall:

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

*Compiler's note: On October 1, 2005 the second sentence in Section 319(A) was amended as follows: "The state shall allow the amount of the any additional remittance shall to be determined through a calculation method rather than actual collections. Any additional remittances and shall not require the filing of an additional return." The amendment to this section became effective upon adoption.*

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

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

- A. Allow a deduction from taxable sales for bad debts. Any deduction taken that is attributed to bad debts shall not include interest.
- B. Utilize the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C. Sec. 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes charged on the purchase price; uncollectable amounts on property that remain in the possession of the seller until the full

purchase price is paid; expenses incurred in attempting to collect any debt, and repossessed property.

- C. Allow bad debts to be deducted on the return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.
- D. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.
- E. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the member state's otherwise applicable statute of limitations for refund claims; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.
- F. Where filing responsibilities have been assumed by a CSP, allow the service provider to claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP must credit or refund the full amount of any bad debt allowance or refund received to the seller.
- G. Provide that, for the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.
- H. In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states, permit the allocation.

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

- A. The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with Model 1 sellers.
- B. As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges; the term "personally

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

- C. The member states agree that a fundamental precept in Model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a CSP shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.
- D. The governing board may certify a CSP only if that CSP certifies that:
  - 1. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
  - 2. That personally identifiable information is only used and retained to the extent necessary for the administration of Model 1 with respect to exempt purchasers;
  - 3. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the CSP;
  - 4. Its collection, use and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and
  - 5. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.
- E. Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use and retention of personally identifiable information.
- F. When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subsection (D)(4), such information shall no longer be retained by the member states.
- G. When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

- H. If anyone other than a member state, or a person authorized by that state's law or the Agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.
- I. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.
- J. Each member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the Agreement does not enlarge or limit the member states' authority to:
  - 1. Conduct audits or other review as provided under the Agreement and state law.
  - 2. Provide records pursuant to a member state's Freedom of Information Act, disclosure laws with governmental agencies, or other regulations.
  - 3. Prevent, consistent with state law, disclosures of confidential taxpayer information.
  - 4. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service.
  - 5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.
- K. This privacy policy does not preclude the governing board from certifying a CSP whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the Agreement.

### **Section 322: SALES TAX HOLIDAYS**

- 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 after December 31, 2004, 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. In order to provide uniformity, a price threshold established by a member state for exempt items shall include only items

priced below the threshold. A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday.

- C. The following procedures are to be used by member states in administering a sales tax holiday exemption:
1. Layaway sales - A sale of eligible property under a layaway sale qualifies for exemption if:
    - a. final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or
    - b. the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.
  2. Bundled sales - Member states will follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.
  3. Coupons and discounts - A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.
  4. Splitting of items normally sold together - Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, a pair of shoes cannot have each shoe sold separately so that the sales price of each shoe is within a sales tax holiday price threshold.
  5. Rain checks - A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain

check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.

6. Exchanges - The procedure for an exchange in regards to a sales tax holiday is as follows:
  - a. If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.
  - b. If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.
  - c. If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.
7. Delivery charges - Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property unless a member state defines "sales price" to exclude such charges. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property (including an eligible item with a sales price in excess of the price threshold), the seller should allocate the delivery charge by using:
  - a. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
  - b. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

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

8. Order date and back orders - For the purpose of a sales tax holiday, eligible property qualifies for exemption if:
  - a. the item is both delivered to and paid for by the customer during the exemption period; or
  - b. the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.
9. Returns - For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.
10. Different time zones - The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

### **Section 323: 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 after December 31, 2005. A member state may continue to have caps and thresholds until that date.

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 after December 31, 2005. A member state may continue to have caps and thresholds until that date.
  - 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.

#### **Section 324: ROUNDING RULE**

- 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.

#### **Section 325: CUSTOMER REFUND PROCEDURES**

- A. These customer refund procedures are provided to apply when a state allows a purchaser to seek a return of over-collected sales or use taxes from the seller.
- B. Nothing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.
- C. These customer refund procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

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

### **Section 326: DIRECT PAY PERMITS**

Each member state shall provide for a 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 will make a determination of the taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each state can set its own limits and requirements for the direct pay permit. The governing board shall advise member states when setting state direct pay limits and requirements, and shall consider use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI Audit and Legal Issues for Tax Administration.

### **Section 327: LIBRARY OF DEFINITIONS**

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.

### **Section 328: TAXABILITY MATRIX**

- 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 matrix.

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

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.

### **Section 330: BUNDLED TRANSACTIONS (Effective on and after January 1, 2008)**

- A. A member state shall adopt and utilize to determine tax treatment, the core definition for a “bundled transaction” in Appendix C, Part I of the Library of Definitions in the Agreement.
- B. Member states are not restricted in their tax treatment of bundled transactions except as otherwise provided in the Agreement. Member states are not restricted in their ability to treat some bundled transactions differently from other bundled transactions.
- C. In the case of a bundled transaction that includes any of the following: telecommunication service, ancillary service, internet access, or audio or video programming service:
  - 1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may 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 products that are subject to tax at different tax rates, the total price may be treated as attributable to the products 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. The provisions of this section shall apply unless otherwise provided by federal law.

*Compiler's note: Section 330 was added on April 16, 2005. Member States shall comply with the provisions of this Section no later than January 1, 2008.*

**ARTICLE IV**  
**SELLER REGISTRATION**

**Section 401: SELLER PARTICIPATION**

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

**Section 402: AMNESTY FOR REGISTRATION**

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

#### **Section 403: METHOD OF REMITTANCE**

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

- A. MODEL 1, 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.
- B. MODEL 2, wherein a seller selects a 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.

#### **Section 404: REGISTRATION BY AN AGENT**

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

**ARTICLE V**  
**PROVIDER AND SYSTEM CERTIFICATION**

**Section 501: CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS**

- A. The governing board shall certify automated systems and service providers to aid in the administration of sale and use tax collections.
- B. The governing board may certify a person as a CSP if the person meets all of the following requirements:
1. The person uses a CAS;
  2. The person integrates its CAS with the system of a seller for whom the person collects tax so that the tax due on a sale is determined at the time of the sale;
  3. The person agrees to remit the taxes it collects at the time and in the manner specified by the member states;
  4. The person agrees to file returns on behalf of the sellers for whom it collects tax;
  5. The person agrees to protect the privacy of tax information it obtains in accordance with Section 321 of the Agreement; and
  6. The person enters into a contract with the member states and agrees to comply with the terms of the contract.
- C. The governing board may certify a software program as a CAS if the governing board determines that the program meets all of the following requirements:
1. It determines the applicable state and local sales and use tax rate for a transaction, in accordance with Sections 309 to 315, inclusive;
  2. It determines whether or not an item is exempt from tax;
  3. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
  4. It can generate reports and returns as required by the governing board; and
  5. It can meet any other requirement set by the governing board.
- D. The governing board may establish one or more sales tax performance standards for Model 3 sellers that meet the eligibility criteria set by the governing board and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

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

**Section 601: MONETARY ALLOWANCE UNDER MODEL 1**

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

**Section 602: MONETARY ALLOWANCE FOR MODEL 2 SELLERS**

The member states initially anticipate that they will provide a monetary allowance to sellers under Model 2 based on the following:

- A. All sellers shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by a seller. The base rate will be set after the base rate has been established for Model 1. This allowance will be in addition to any discount afforded by each member state at the time.
- B. The member states anticipate a monetary allowance to a Model 2 Seller based on the following:
  - 1. For a period not to exceed twenty-four months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax 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.

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

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

- 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.

**ARTICLE VII**  
**AGREEMENT ORGANIZATION**

**Section 701: EFFECTIVE DATE**

The Agreement shall become binding and take effect when at least ten states comprising at least twenty percent of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have either been found to be in compliance with the requirements of the Agreement pursuant to Section 805 or have been found to be an associate member pursuant to Section 704. The Agreement shall take effect on the first day of a calendar quarter at least sixty days after the tenth state is found in compliance or is found to be an associate member.

*Compiler's note: On April 16, 2005 Section 701 was amended by inserting "either" after "and have" in the first sentence; inserting "or have been found to be an associate member pursuant to Section 704" at the end of the first sentence; and deleting ", but cannot take effect prior to July 1, 2003" and inserting "or is found to be an associate member" at the end of the second sentence. The April 16, 2005 amendments to this section were effective upon adoption.*

**Section 702: APPROVAL OF INITIAL STATES**

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

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

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

*Compiler's note: On April 16, 2005 this section was amended by deleting "that has adopted changes to its statutes, rules, regulations, or other authorities necessary to bring a state into compliance as provided in Section 805," after "a state" in the first sentence; inserting the second sentence; inserting "to a state's statutes, rules, regulations, or other authorities" after "changes" in the third sentence; and deleting ", but shall not be earlier than the date the relevant statutes, rules, regulations, or other authorities of the requisite number of petitioning states are effective" after "Section 701" in the second sentence in the second paragraph. The April 16, 2005 amendments to this section were effective upon adoption.*

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

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

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

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

*Compiler's note: On April 16, 2005 Section 703 was amended by inserting the second sentence in 703 (A) and inserting "without the use of associate members" after "are met" in 703 (C). The April 16, 2005 amendments to this section were effective upon adoption.*

### **Section 704: CONSIDERATION OF PETITIONS**

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

B. A petitioning state that is found to be in compliance pursuant to Section 805 of the Agreement and the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008, shall be designated an associate member. Provided the statutes, rules, regulations or other authorities remain in effect, the state shall automatically become a Member State upon the effective date of the conforming legislation.

C. A petitioning state that fails to receive an affirmative vote of three-fourths of the petitioning states as required under Section 702 may request associate membership. If such a request is made, the Petitioning States may grant such membership by majority vote upon a finding that the state has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision as required by Section 805, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008. A state that is granted associate membership by this section shall be required to re-petition for full membership under the requirements of the Agreement.

*Compiler's note: On April 16, 2005 Section 704 was added and was effective upon adoption.*

#### **Section 705: ASSOCIATE MEMBERSHIP**

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

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

C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such

taxes under applicable law. Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in an associate member state is not required to collect tax in any other associate member state. An associate member shall be responsible for payment of costs as provided in Article VI for those sellers that volunteer to collect tax in an associate member state.

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

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

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

*Compiler's note: On April 16, 2005 Section 705 was added and was effective upon adoption.*

**ARTICLE VIII**  
**STATE ENTRY AND WITHDRAWAL**

**Section 801: ENTRY INTO AGREEMENT**

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

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

**Section 802: CERTIFICATE OF COMPLIANCE**

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

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

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

A member state that cannot re-certify its compliance with the Agreement shall submit a statement of non-compliance to the governing board. The statement of non-compliance shall include any action or decision that takes such state out of compliance with the Agreement and the steps it will take to return to compliance. The

governing board shall promulgate rules and procedures to respond to statements of noncompliance in accordance with Section 809.

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

#### **Section 804: REQUIREMENTS FOR MEMBERSHIP APPROVAL**

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

#### **Section 805: COMPLIANCE**

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

#### **Section 806: AGREEMENT ADMINISTRATION**

Authority to administer the Agreement shall rest with the governing board comprised of representatives of each member state. Each member state may appoint up to four representatives to the governing board. The representatives shall be members of the executive or legislative branches of the state. Each member state shall be entitled to one vote on the governing board. Except as otherwise provided in the Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of the governing board present and voting. The governing board shall determine its meeting schedule, but shall meet at least once annually. The governing board shall provide a public comment period at each meeting to provide members of the public an opportunity to address the board on matters relevant to the administration or operation of the Agreement. The governing board shall provide public notice of its meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules establishing the public notice requirements for holding emergency meetings on less than thirty day's notice. The governing board may meet electronically.

The governing board is responsible for the administration and operation of the Agreement, including the appointment of all manner of committees. The governing board may employ staff, advisors, consultants or

agents. The governing board may promulgate rules and procedures it deems necessary to carry out its responsibilities. The governing board may take any action that is necessary and proper to fulfill the purposes of the Agreement. The governing board may allocate the cost of administration of the Agreement among the member states.

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

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

#### **Section 807: OPEN MEETINGS**

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

- A. Personnel issues.
- B. Information required by the laws of any member state to be protected from public disclosure. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.
- C. Proprietary information requested by any business to be protected from disclosure.
- D. The consideration of issues incident to competitive bidding, requests for information, or certification, the disclosure of which would defeat the public interest in a fair and competitive process.
- E. The consideration of pending litigation in a member state the discussion of which in a public session would, in the judgment of the member state engaged in the litigation, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.
- F. The consideration of pending litigation in which the governing board is a party the discussion of which in a public session would, in the judgment of the governing board, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

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

*Compiler's note: On April 16, 2005 Section 807 (F) was added and was effective upon its adoption.*

### **Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER**

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

### **Section 809: SANCTION OF MEMBER STATES**

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

### **Section 810: STATE AND LOCAL ADVISORY COUNCIL**

The governing board shall create a State and Local Government Advisory Council to advise the governing board on matters pertaining to the administration of the Agreement. The membership shall include at least one representative from each state that is a participating member of the Streamlined Sales Tax Project pursuant to

the Operating Rules of the Project as designated by that state. In addition, the governing board shall appoint local government officials to the State and Local Government Advisory Council. The governing board may appoint other state officials as it deems appropriate. Matters pertaining to the administration of the Agreement shall include, but not be limited to, admission of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement. The State and Local Government Advisory Council shall advise and assist the Business Advisory Council in the functions noted in Section 811.

*Compiler's note: On April 16, 2005 Section 810 was amended by deleting "and Taxpayer" after "Business" in the last sentence. The amendment to this section was effective upon its adoption.*

### **Section 811: BUSINESS ADVISORY COUNCIL**

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

*Compiler's note: On April 16, 2005 Section 811 was amended by deleting "AND TAXPAYER" from the title line; deleting "create" and inserting "recognize" after "shall" in the first sentence and deleting "and Taxpayer" after "Business" from the first and third sentences. The amendments to this section were effective upon its adoption.*

**ARTICLE IX**  
**AMENDMENTS AND INTERPRETATIONS**

**Section 901: AMENDMENTS TO AGREEMENT**

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

**Section 902: INTERPRETATIONS OF AGREEMENT**

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

**Section 903: DEFINITION REQUESTS**

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

- A. That no action be taken on the request;
- B. That a proposed amendment to the Library be submitted;

- C. That an interpretation request be submitted; or
- D. That additional time is needed to review the request.

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

**ARTICLE X**  
**ISSUE RESOLUTION PROCESS**

**Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION**

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

**Section 1002: PETITION FOR RESOLUTION**

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

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

**Section 1003: FINAL DECISION OF GOVERNING BOARD**

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

**Section 1004: LIMITED SCOPE OF THIS ARTICLE**

Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or otherwise affect, in any manner, any right or duty that any person or governmental body has under the laws of any member state or local government body. This Article is specifically subject to the terms of Article XI and shall not be construed as taking precedence over Article XI.

## ARTICLE XI

### RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

#### **Section 1101: COOPERATING SOVEREIGNS**

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

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

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

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

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

#### **Section 1104: FINAL DETERMINATIONS**

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

**ARTICLE XII**

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

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

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

**APPENDIX A**  
**STREAMLINED SALES AND USE TAX AGREEMENT**  
**PETITION FOR MEMBERSHIP**

**WHEREAS**, it is in the interest of the private sector and of state and local governments to simplify and modernize sales and use tax administration;

**WHEREAS**, such simplification and modernization will result in a substantial reduction in the costs and complexity for sellers of personal property and services in conducting their commercial enterprises;

**WHEREAS**, such simplification and modernization will also result in additional voluntary compliance with the sales and use tax laws;

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

**WHEREAS**, the State of \_\_\_\_\_ levies a sales tax and levies a use tax. “Sales tax” means the tax levied under (CITE SPECIFIC STATUTE) and “use tax” means the tax levied under (CITE SPECIFIC STATUTE).

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

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

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

**Appendix B**  
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## Appendix C

### LIBRARY OF DEFINITIONS

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

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

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

## PART I

### Administrative Definitions

A “**bundled transaction**” is the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. A “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

A. “Distinct and identifiable products” does not include:

1. Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the “retail sale” of the products and are incidental or immaterial to the “retail sale” thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.
2. A product provided free of charge with the required purchase of another product. A product is “provided free of charge” if the “sales price” of the product purchased does not vary depending on the inclusion of the product “provided free of charge.”

3. Items included in the member state's definition of "sales price," pursuant to Appendix C of the Agreement.
- B. The term "one non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.
- C. A transaction that otherwise meets the definition of a "bundled transaction" as defined above, is not a "bundled transaction" if it is:
  1. The "retail sale" of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or
  2. The "retail sale" of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or
  3. A transaction that includes taxable products and nontaxable products and the "purchase price" or "sales price" of the taxable products is de minimis.
    - a. De minimis means the seller's "purchase price" or "sales price" of the taxable products is ten percent (10%) or less of the total "purchase price" or "sales price" of the bundled products.
    - b. Sellers shall use either the "purchase price" or the "sales price" of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the "purchase price" and "sales price" of the products to determine if the taxable products are de minimis.
    - c. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or
  4. The "retail sale" of exempt tangible personal property and taxable tangible personal property where:
    - a. the transaction includes "food and food ingredients", "drugs", "durable medical equipment", "mobility enhancing equipment", "over-the-counter drugs", "prosthetic devices" (all as defined in Appendix C) or medical supplies; and
    - b. where the seller's "purchase price" or "sales price" of the taxable tangible personal property is fifty percent (50%) or less of the total "purchase price" or "sales price" of the

bundled tangible personal property. Sellers may not use a combination of the “purchase price” and “sales price” of the tangible personal property when making the fifty percent (50%) determination for a transaction.

*Compiler’s note: On April 16, 2005 the definition of a “bundled transaction” was added. Member States shall comply with this definition no later than January 1, 2008.*

**“Delivery charges”** means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

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

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

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

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

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

**“Lease or rental”** means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

A. Lease or rental does not include:

1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
  2. A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or
  3. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property.
- B. Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).
- C. This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the [state commercial code], or other provisions of federal, state or local law.
- D. This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals. This definition shall neither impact any existing sale-leaseback exemption or exclusions that a state may have, nor preclude a state from adopting a sale-leaseback exemption or exclusion after the effective date of the Agreement.

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

**“Retail sale or Sale at retail”** means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

**“Sales price” (Effective through December 31, 2007)** applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller's cost of the property sold;

- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges;
- F. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
- G. Credit for any trade-in, as determined by state law.

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

“Sales price” shall not include:

- A. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- B. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and
- C. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

**“Sales price” (Effective on and after January 1, 2008)** applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller's cost of the property sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

States may exclude from “sales price” the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser. States may exclude from (B) above, “telecommunications nonrecurring” charges if they are separately stated on the invoice, billing, or similar documents. A state doing so must define “telecommunications nonrecurring charges” as follows:

**“Telecommunications nonrecurring charges”** means an amount billed for the installation, connection, change or initiation of “telecommunications service” received by the customer.

“Sales price” shall not include:

- A. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- B. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and
- C. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

“Sales price” shall include consideration received by the seller from third parties if:

- A. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
- B. The seller has an obligation to pass the price reduction or discount through to the purchaser;
- C. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- D. One of the following criteria is met:

1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
2. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group), or
3. The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

States may also exclude from “sales price” either employee discounts that are reimbursed by a third party on sales of motor vehicles, or manufacturer rebates on motor vehicles, or both.

*Compiler’s note: On April 16, 2005 the following amendments were made to the definition of “Sales Price”.*

1. *Deleting “F. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;” and renumbering “G” to “F”.*
2. *Changing the cross reference to reflect the renumbering, inserting the second and third sentences in the paragraph following (F), and inserting the definition of “telecommunications nonrecurring charges”.*
3. *Inserting all of the material starting with “Sales price” shall include consideration received by the seller from third parties”.*

*Member states shall comply with the changes to this definition no later than January 1, 2008.*

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

## **PART II**

### **Product Definitions**

#### **CLOTHING**

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

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

32. Steel toed shoes;
33. Underwear;
34. Uniforms, athletic and non-athletic; and
35. Wedding apparel.

B. "Clothing" shall not include:

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

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

- A. Briefcases;
- B. Cosmetics;
- C. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
- D. Handbags;
- E. Handkerchiefs;
- F. Jewelry;
- G. Sun glasses, non-prescription;
- H. Umbrellas;
- I. Wallets;
- J. Watches; and
- K. Wigs and hair pieces.

**"Protective equipment"** means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use. "Protective equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing," "clothing accessories or equipment," and "sport or

recreational equipment.” The following list contains examples and is not intended to be an all-inclusive list. “Protective equipment” shall include:

- A. Breathing masks;
- B. Clean room apparel and equipment;
- C. Ear and hearing protectors;
- D. Face shields;
- E. Hard hats;
- F. Helmets;
- G. Paint or dust respirators;
- H. Protective gloves;
- I. Safety glasses and goggles;
- J. Safety belts;
- K. Tool belts; and
- L. Welders gloves and masks.

**"Sport or recreational equipment"** means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. “Sport or recreational equipment” are mutually exclusive of and may be taxed differently than apparel within the definition of “clothing,” “clothing accessories or equipment,” and “protective equipment.” The following list contains examples and is not intended to be an all-inclusive list. “Sport or recreational equipment” shall include:

- A. Ballet and tap shoes;
- B. Cleated or spiked athletic shoes;
- C. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;
- D. Goggles;
- E. Hand and elbow guards;
- F. Life preservers and vests;
- G. Mouth guards;
- H. Roller and ice skates;
- I. Shin guards;
- J. Shoulder pads;
- K. Ski boots;
- L. Waders; and

M. Wetsuits and fins.

### **COMPUTER RELATED**

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

“**Computer software**” means a set of coded instructions designed to cause a “computer” or automatic data processing equipment to perform a task.

“**Delivered electronically**” means delivered to the purchaser by means other than tangible storage media.

“**Electronic**” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“**Load and leave**” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

“**Prewritten computer software**” means “computer software,” including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

The combining of two or more “prewritten computer software” programs or prewritten portions thereof does not cause the combination to be other than “prewritten computer software.” “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances “computer software” of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements.

“Prewritten computer software” or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains “prewritten computer software;” provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute “prewritten computer software.”

A member state may exempt “prewritten computer software” “delivered electronically” or by “load and leave.”

### **FOOD AND FOOD PRODUCTS**

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

**“Candy”** means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces.

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

**“Dietary supplement”** means any product, other than “tobacco,” intended to supplement the diet that:

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

1. A vitamin;
2. A mineral;
3. An herb or other botanical;
4. An amino acid;
5. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
6. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.

**“Food and food ingredients”** means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include “alcoholic beverages” or “tobacco.” A member state may exclude “candy,” “dietary supplements” and “soft drinks” from this definition, which items are mutually exclusive of each other.

Notwithstanding the foregoing requirements of this definition or any other provision of the Agreement, a member state may maintain its tax treatment of food in a manner that differs from the definitions provided herein, provided its taxation or exemption of food is based on a prohibition or requirement of that state’s Constitution that exists on the effective date of the Agreement.

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

**“Prepared food”** means:

- A. Food sold in a heated state or heated by the seller;
- B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or

C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

“Prepared food” in B does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

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

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

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

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

“**Tobacco**” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

### **HEALTH-CARE**

“**Drug**” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

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

A member state may independently:

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

**“Durable medical equipment” (Effective through December 31, 2007)** means equipment including repair and replacement parts for same, but does not include “mobility enhancing equipment,” which:

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

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

**“Durable medical equipment” (Effective on and after January 1, 2008)** means equipment including repair and replacement parts for same, but does not include “mobility enhancing equipment,” which:

- E. Can withstand repeated use; and
- F. Is primarily and customarily used to serve a medical purpose; and
- G. Generally is not useful to a person in the absence of illness or injury; and
- H. Is not worn in or on the body.

A member state may limit its exemption to “durable medical equipment:”

- A. By requiring a prescription;
- B. Based on Medicare or Medicaid payments or reimbursement; or
- C. For home use.

A member state may limit the exemption using any combination of the above but in no case shall an exemption certificate be required.

*Compiler's note: On October 1, 2005 the durable medical equipment definition was amended by deleting: "~~A member state may limit its exemption to "durable medical equipment" used for home use only. A member state may limit the application of this definition by requiring a "prescription," or limit an exemption based on Medicare or Medicaid payments or reimbursements~~" after D and inserting:*

*"A member state may limit its exemption to "durable medical equipment:"*

*A. By requiring a prescription;*

*B. Based on Medicare or Medicaid payments or reimbursement; or*

*C. For home use.*

*A member state may limit the exemption using any combination of the above but in no case shall an exemption certificate be required."*

*Member states shall adopt and utilize this definition no later than January 1, 2008.*

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

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

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

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

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

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

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

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

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

A member state may exclude any or all of the following from the definition of “prosthetic device:”

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

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

### **TELECOMMUNICATIONS (Effective on and after January 1, 2008)**

#### **Tax Base/Exemption Terms**

“**Ancillary services**” means services that are associated with or incidental to the provision of “telecommunications services”, including but not limited to “detailed telecommunications billing”, “directory assistance”, “vertical service”, and “voice mail services”.

“**Conference bridging service**” means an “ancillary service” that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include the “telecommunications services” used to reach the conference bridge.

“**Detailed telecommunications billing service**” means an “ancillary service” of separately stating information pertaining to individual calls on a customer’s billing statement.

“**Directory assistance**” means an “ancillary service” of providing telephone number information, and/or address information.

“**Vertical service**” means an “ancillary service” that is offered in connection with one or more “telecommunications services”, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including “conference bridging services”.

**“Voice mail service”** means an “ancillary service” that enables the customer to store, send or receive recorded messages. “Voice mail service” does not include any “vertical services” that the customer may be required to have in order to utilize the “voice mail service”.

**“Telecommunications service”** means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

- A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;
- B. Installation or maintenance of wiring or equipment on a customer’s premises;
- C. Tangible personal property;
- D. Advertising, including but not limited to directory advertising.
- E. Billing and collection services provided to third parties;
- F. Internet access service;
- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- H. “Ancillary services”; or
- I. Digital products “delivered electronically”, including but not limited to software, music, video, reading materials or ring tones.

**“800 service”** means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

**“900 service”** means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for: collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.

**“Fixed wireless service”** means a “telecommunications service” that provides radio communication between fixed points.

**“Mobile wireless service”** means a “telecommunications service” that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, “telecommunications services” that are provided by a commercial mobile radio service provider.

**“Paging service”** means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

**“Prepaid calling service”** means the right to access exclusively “telecommunications services”, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

**“Prepaid wireless calling service”** means a “telecommunications service” that provides the right to utilize “mobile wireless service” as well as other non-telecommunications services including the download of digital products “delivered electronically”, content and “ancillary services”, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

**“Private communications service”** means a “telecommunications service” that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

**“Value-added non-voice data service”** means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

### **Modifiers of Sales Tax Base/Exemption Terms**

The following terms can be used to further delineate the type of “telecommunications service” to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

**“Coin-operated telephone service”** means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.

**“International”** means a “telecommunications service” that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

**“Interstate”** means a “telecommunications service” that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

**“Intrastate”** means a “telecommunications service” that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

**“Pay telephone service”** means a “telecommunications service” provided through any pay telephone.

**“Residential telecommunications service”** means a “telecommunications service” or “ancillary services” provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools

or nursing homes, “telecommunications service” is considered residential if it is provided to and paid for by an individual resident rather than the institution.

The terms “ancillary services” and “telecommunications service” are defined as a broad range of services. The terms “ancillary services” and “telecommunications service” are broader than the sum of the subcategories. Definitions of subcategories of “ancillary services” and “telecommunications service” can be used by a member state alone or in combination with other subcategories to define a narrower tax base than the definitions of “ancillary services” and “telecommunications service” would imply. The subcategories can also be used by a member state to provide exemptions for certain subcategories of the more broadly defined terms.

A member state that specifically imposes tax on, or exempts from tax, local telephone or local telecommunications service may define “local service” in any manner in accordance with Section 327 of the Agreement, except as limited by other sections of this Agreement.

*Compiler’s note: On April 16, 2005 the telecommunications definitions were added to the Agreement. Member states shall adopt and utilize these definitions no later than January 1, 2008.*

## PART III

### Sales Tax Holiday Definitions

The definitions in this Part are only applicable for the purpose of administration of a sales tax holiday, as defined in Section 322 (A).

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

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

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

**"School supply"** is an item commonly used by a student in a course of study. The term is mutually exclusive of the terms "school art supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list:

- A. Binders;
- B. Book bags;
- C. Calculators;
- D. Cellophane tape;
- E. Blackboard chalk;
- F. Compasses;
- G. Composition books;
- H. Crayons;
- I. Erasers;
- J. Folders; expandable, pocket, plastic, and manila;
- K. Glue, paste, and paste sticks;
- L. Highlighters;
- M. Index cards;
- N. Index card boxes;

- O. Legal pads;
- P. Lunch boxes;
- Q. Markers;
- R. Notebooks;
- S. Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
- T. Pencil boxes and other school supply boxes;
- U. Pencil sharpeners;
- V. Pencils;
- W. Pens;
- X. Protractors;
- Y. Rulers;
- Z. Scissors; and
- AA. Writing tablets.

**“School art supply”** is an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms “school supply,” “school instructional material,” and “school computer supply,” and may be taxed differently. The following is an all-inclusive list:

- A. Clay and glazes;
- B. Paints; acrylic, tempora, and oil;
- C. Paintbrushes for artwork;
- D. Sketch and drawing pads; and
- E. Watercolors.

**“School instructional material”** is written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms “school supply,” “school art supply,” and “school computer supply,” and may be taxed differently. The following is an all-inclusive list:

- A. Reference books;
- B. Reference maps and globes;
- C. Textbooks; and
- D. Workbooks.

**“School computer supply”** is an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms “school supply,” “school art supply,” and “school instructional material,” and may be taxed differently. The following is an all-inclusive list:

- A. Computer storage media; diskettes, compact disks;
- B. Handheld electronic schedulers, except devices that are cellular phones;
- C. Personal digital assistants, except devices that are cellular phones;
- D. Computer printers; and
- E. Printer supplies for computers; printer paper, printer ink.

## Proposed legislation to bring Maine into conformity with the Agreement

**Be it enacted by the People of the State of Maine as follows:**

**Sec. . 5 MRSA §13090-K, sub-§2**, as enacted by PL 2001, c. 439, Pt. UUUU, §1, is amended to read:

**2. Source of fund.** Beginning July 1, 2003 and every July 1st thereafter, the State Controller shall transfer to the Tourism Marketing Promotion Fund an amount, as certified by the State Tax Assessor, that is equivalent to the sum of 5% of the 7% tax imposed on tangible personal property and taxable services pursuant to Title 36, section 1811, and 5% of the 7% tax imposed on meals and rentals pursuant to Title 36, chapter 721, for the first 6 months of the prior fiscal year after the reduction for the transfer to the Local Government Fund as described by Title 30-A, section 5681, subsection 5. Beginning on October 1, 2003 and every October 1st thereafter, the State Controller shall transfer to the Tourism Marketing Promotion Fund an amount, as certified by the State Tax Assessor, that is equivalent to the sum of 5% of the 7% tax imposed on tangible personal property and taxable services pursuant to Title 36, section 1811, and 5% of the 7% tax imposed on meals and rentals pursuant to Title 36, chapter 721, for the last 6 months of the prior fiscal year after the reduction for the transfer to the Local Government Fund. The tax amount must be based on actual sales for that fiscal year and may not consider any accruals that may be required by law. The amount transferred from General Fund ~~sales and use tax revenues pursuant to this section~~ does not affect the calculation for the transfer to the Local Government Fund.

**Sec. . 10 MRSA §1305**, as amended by PL 1997, c. 668, §1, is further amended to read:

**§1305. Terminal rental adjustment clauses; vehicle leases that are not sales or security interests**

Notwithstanding any other provision of law, in the case of motor vehicles or trailers, a transaction does not create a sale or security interest merely because the agreement provides that the rental price is permitted or required to be adjusted upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer. ~~A transaction may be considered a sale for purposes of Title 36.~~

**Sec. . 21-A MRSA §1124, sub-§2, ¶B**, as amended by PL 2003, c. 673, Pt. EE, §1, is further amended to read:

B. Two million dollars of the revenues from the taxes imposed under Title 36, Parts 3 and 8 and chapter 721 and credited to the General Fund, transferred to the fund by the State Controller on or before January 1st of each year, beginning January 1, 1999. These revenues must be offset in an equitable manner by an equivalent reduction within the administrative divisions of the legislative branch and executive branch agencies. This section may not affect the funds distributed to the Local Government Fund under Title 30-A, section 5681.

If the commission determines that the fund will not have sufficient revenues to cover the likely demand for funds from the Maine Clean Election Fund in an upcoming calendar year, by January 1<sup>st</sup> the commission shall provide a report of its projections of the balances in the Maine Clean Election Fund to the Legislature and the Governor and may request that the State Controller make the following transfers to the Maine Clean Election Fund from the General Fund:

(1) Up to \$2,000,000 no later than February 28, 2006, reflecting an advance of the transfer of the amounts that would be received on or before January 1, 2007 pursuant to this paragraph;

(2) Up to \$2,000,000 no later than July 31, 2006, reflecting an advance of the transfer of the amounts that would be received on or before January 1, 2008 pursuant to this paragraph; and

(3) Up to \$1,500,000 no later than September 1, 2004, reflecting a partial advance of the transfer of the amounts that would be received on or before January 1, 2005 pursuant to this paragraph;

**Sec. . 30-A MRSA §5681, sub-§2, ¶C**, as amended by PL 2005, c. 2, Pt. G, §1, is further amended to read:

C. “Annual growth ceiling” for fiscal year 2005-06 means \$100,000,000. For subsequent fiscal years, “annual growth ceiling” must be determined by the State Tax Assessor by September 1st annually and means the annual growth ceiling adjusted by the lower of the increase for the previous fiscal year in the Consumer Price Index or the increase in receipts from the taxes imposed under Title 36, Parts 3 and 8 and chapter 721. The annual growth ceiling may not be less than the annual growth ceiling for the previous year.

**Sec. . 30-A MRSA §5681, sub-§5**, as amended by PL 2005, c. 12, Pt. E, §1, is further amended to read:

**5. Transfers to funds.** On the last day of each month, the Treasurer of State shall transfer to the Local Government Fund a percentage, as provided in this subsection, of the receipts from the taxes imposed under Title 36, Parts 3 and 8, Title 36, chapter 721 and Title 36, section 2552, subsection 1, paragraphs A to F, and credited to the General Fund without any reduction, except that the postage, state cost allocation program and programming costs of administering state-municipal revenue sharing may be paid by the Local Government Fund. Any amounts transferred to the Local Government Fund in excess of the annual growth ceiling must be transferred to the Disproportionate Tax Burden Fund. The percentage transferred to the Local Government Fund on the last day of each month is:

A. For months beginning before July 1, 2007, 5.1%; and

B. For months beginning on or after July 1, 2007, 5.2%.

**Sec. . 36 MRSA §113, sub-§4**, is enacted to read:

**4. Allowances for new technological models.** The State Controller may transfer from the General Fund amounts authorized by the State Tax Assessor equal to monetary allowances paid to retailers and certified service providers for new technological models pursuant to a contract between the governing board of the Streamlined Sales and Use Tax Agreement and the retailer or certified service provider under that agreement, or subject to performance standards established by the governing board. For a period not to exceed 24 months following the voluntary registration through the Streamlined Sales and Use Tax Agreement’s central registration process of a retailer that is not required to register by section 1754-B, the monetary allowance may include a percentage of tax revenue generated by the retailer. These amounts transferred must be deposited into a dedicated, nonlapsing account to be used solely for the purpose of paying these expenses. Interest earned on balances in the account accrue to the account. The assessor shall notify the State Controller of the amounts to be transferred pursuant to this section.

**Sec. . 36 MRSA §177, sub-§1**, as amended by PL 1999, c. 708, §9, is further amended to read:

**1. Generally.** All sales and use taxes collected by a person pursuant to Part 3, all taxes collected by a person under color of Part 3 that have not been properly returned or credited to the persons from whom they were collected, all taxes collected by or imposed on a person pursuant to chapter 451 or 459, all fees collected pursuant to chapter 719 and all taxes collected by a person pursuant to chapter 721 or chapter 827 constitute a special fund in trust for the State Tax Assessor. The liability for the taxes or fees and the interest or penalty on taxes or fees is enforceable by assessment and collection, in the manner prescribed in this Part, against the person and against any officer, director, member, agent or employee of that person who, in that capacity, is responsible for the control or management of the funds or finances of that person or is responsible for the payment of that person's taxes. An assessment against a responsible individual pursuant to this section must be made within 6 years from the date on which the return on which the taxes were required to be reported was filed. An assessment pursuant to this section may be made at any time with respect to a time period for which a return has become due but has not been filed.

**Sec. . 36 MRSA §177, sub-§3**, as amended by PL 1999, c. 414, §8, is further amended to read:

**3. Notice to segregate.** ~~Whenever~~ If the ~~State Tax Assessor finds~~ assessor determines that the payment of the trust funds established under subsection 1 will be jeopardized by delay, neglect or misappropriation or ~~whenever any~~ if a person fails to make payment of taxes or file reports as required by Part 3; or by chapter 451, 459, 721 or 827, the assessor may direct that person to segregate the trust funds from and not to commingle them with any other funds or assets of that person. All taxes that are collected after receipt of the notice of the segregation requirement must be paid on account to the assessor until the taxes are due. The assessor shall establish in the segregation notice the manner in which the taxes are to be paid. The segregation requirement remains in effect until a notice of cancellation is given by the assessor.

**Sec. . 36 MRSA §177, sub-§4**, as amended by PL 2003, c. 705, §2, is further amended to read:

**4. Revocation for nonsegregation.** If ~~any~~ a person who is a retailer under Part 3 ~~or~~, a fuel supplier, retailer, distributor or importer subject to Part 5 or an operator under chapter 721 fails to make the required payments on account to the ~~State Tax Assessor~~ assessor, the assessor may revoke any registration certificate that has been issued to that person. The revocation is reviewable in accordance with section 151.

**Sec. . 36 MRSA §182, sub-§1**, as enacted by PL 2001, c. 583, §8, is amended to read:

**1. Generally.** The State Tax Assessor may, through the Attorney General, file an action in Superior Court applying for an order to enjoin from doing business any person who has:

- A. Failed to register with the ~~bureau~~ assessor when the person is required to register by any provision of Part 3 or Part 5 or by chapter 721 or by any rule adopted pursuant to this Title, provided that the assessor has provided written notice and the person continues to fail to register 15 days after receiving notice from the assessor of such failure;
- B. Failed to file with the assessor any overdue return required by Part 3 or Part 5 or by chapter 721 within 15 days after receiving notice from the assessor of such failure;
- C. Failed to pay any tax required by Part 3 or Part 5 or by chapter 721 when the tax is shown to be due on a return filed by that person, or that is otherwise conceded by that person to be due, or has been determined by the assessor to be due and that determination has become final;
- D. Knowingly filed a false return required by Part 3 or Part 5 or by chapter 721; or

E. Failed to deduct and withhold, or truthfully account for or pay over or make returns of, income taxes in violation of the provisions of chapter 827.

Sec. . 36 MRSA §184, sub-§3, as repealed and replaced by PL 2003, c. 452, Pt. U, §1 and affected by Pt. X, §2, is amended to read:

**3. “Person” defined.** For purposes of this section, the word “person” includes, in addition to its defined meaning in section 111, subsection 3, an officer, director, member, agent or employee of another person who, in that capacity, is responsible for the control or management of the funds and finances of that person or is responsible for either the collection or the payment of that retailer’s person’s trust fund taxes.

Sec. . 36 MRSA §191, sub-§3-B, is enacted to read:

**3-B. Streamlined Sales and Use Tax Agreement.** The State Tax Assessor and any certified service provider as defined by section 1752 shall comply with the confidentiality and privacy requirements set forth in section 321 of the Streamlined Sales and Use Tax Agreement.

Sec. . 36 MRSA §1482, sub-§5, ¶D, as amended by PL 1997, c. 175, §1, is further amended to read:

D. ~~No~~ Except as provided in subsection 7 and section 1485-A, no portion of any excise tax once paid may be repaid to any person by reason of the transfer of vehicles or discontinuance of the use of a vehicle.

Sec. . 36 MRSA §1485-A is enacted to read:

**§1485-A. Excise tax reimbursement allowed in certain cases**

**1. Reimbursement.** A person engaged in the business of renting automobiles for a period of less than one year is entitled to reimbursement of excise tax paid as provided by this section. The State Tax Assessor shall determine the reimbursement to be paid to a person filing a return pursuant to subsection 2. The reimbursement is determined by computing the total excise tax reimbursement entitlement during the most recently completed period from July 1st to June 30th for which the person has filed a return pursuant to subsection 2. An excise tax reimbursement entitlement accrues for each vehicle excise tax paid in the completed period for which the associated Maine registration was surrendered prior to the expiration of the associated 12-month excise tax period, unless the excise tax was credited to another registration, in which case the 12-month period continues to run in association with the replacement registration. The amount of the reimbursement is equal to the amount of the excise tax paid in order to register the original vehicle multiplied by a fraction, the numerator of which is the number of complete months short of 12 months during which the registration was surrendered and the denominator of which is 12.

**2. Return required.** A person entitled to a reimbursement pursuant to subsection 1 shall file a return with the State Tax Assessor on or before September 1st annually. The return must include the information required by the State Tax Assessor to determine the person’s excise tax reimbursement entitlement. For good cause, the State Tax Assessor may extend the September 1st filing deadline for a period not to exceed one year.

**3. Treasurer of State; notification.** Upon the determination of the reimbursement amount to be paid to a person, the State Tax Assessor shall inform the Treasurer of State of the determination and the Treasurer of State shall make the reimbursement. Unless the reimbursement is paid before November 1st of the year in which the return required in subsection 2 is filed or within 60 days of the filing of that report, whichever is later, interest at the rate provided in section 186 must be paid for the period between the expiration of the deadline and the time of payment.

Sec. . 36 MRSA §1752 is amended to read:

**§1752. Definitions**

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

**1. Advertisement.** “Advertisement” means any public announcement of whatever kind or character and includes any notice or announcement in any radio or television broadcast, newspaper, magazine, catalog, circular, handbill, sign, placard or any billboard.

**1-A. Aircraft.** “Aircraft” means any powered contrivance designed for navigation in the air except a rocket or missile.

**1-B. Automobile.** “Automobile,” for purposes of section 1760, subsection ~~17-B~~ 89, means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks.

**1-C. Business.** “Business” includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

**1-D. Casual sale.** “Casual sale” means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. “Casual sale” includes transactions at a bazaar, fair, rummage sale, picnic or similar event by a civic, religious or fraternal organization that is not a registered retailer. The sale by a registered retailer of tangible personal property that that retailer has used in the course of the retailer’s business is not a casual sale if that property is of like character to that sold by the retailer in the ordinary course of repeated and successive transactions. “Casual sale” does not include any transaction in which a retailer sells tangible personal property or a taxable service on behalf of the owner of that property or the provider of that service. “Casual sale” includes any sale by a personal representative in the settlement of an estate, unless the sale is made through a retailer, or unless the sale is made in the continuation or operation of a business.

~~**1-E. Custom computer software program.** “Custom computer software program” means any computer software that is written or prepared exclusively for a particular customer. “Custom computer software program” does not include a “canned” or prewritten program that is held or exists for a general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. An existing prewritten program that has been modified to meet a particular customer’s needs is a “custom computer software program” to the extent of the modification, and to the extent that the amount charged for the modification is separately stated.~~

**1-F. Clean fuel.** “Clean fuel” means all products or energy sources used to propel motor vehicles, as defined in Title 29-A, section 101, other than conventional gasoline, diesel or reformulated gasoline, that, when compared to conventional gasoline, diesel or reformulated gasoline, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination of these. “Clean fuel” includes, but is not limited to, compressed natural gas; liquefied natural gas; liquefied petroleum gas; hydrogen; hythane, which is a combination of compressed natural gas and hydrogen; dynamic flywheels; solar energy; alcohol fuels containing not less than 85% alcohol by volume; and electricity.

**1-G. Clean fuel vehicle.** “Clean fuel vehicle” means a vehicle that may be propelled by a clean fuel or a fuel-cell electric vehicle that uses any fuel.

**1-H. Agreement.** “Agreement” means the Streamlined Sales and Use Tax Agreement entered into by the State Tax Assessor on behalf of this State pursuant to section 7124.

**1-I. Alcoholic beverages.** “Alcoholic beverages” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

**1-J. Bundled transaction.** “Bundled transaction” means the retail sale of two or more distinct and identifiable products for one non-itemized price.

“Bundled transaction” does not include:

A. Sales of real property and services to real property;

B. A sale in which the sale price varies or is negotiable based on the selection by the purchaser of the products included in the transaction;

C. A sale of tangible personal property and a service where the tangible personal property is essential to the use of the service and is provided exclusively in connection with the service, and the service is the true object of the transaction;

D. A sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the second service is the true object of the transaction;

E. A transaction that includes taxable products and nontaxable products where the seller’s purchase price of the taxable products is ten per cent or less of the total purchase price of the bundled products or the seller’s sale price of the taxable products is ten per cent or less of the total sale price of the bundled products; or

F. A transaction that includes exempt tangible personal property and taxable tangible personal property where the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies and where the seller’s purchase price of the taxable products is fifty per cent or less of the total purchase price of the bundled products or the seller’s sale price of the taxable products is fifty per cent or less of the total sale price of the bundled products.

For purposes of this subsection, “distinct and identifiable products” does not include items such as packaging, wrapping materials, labels, tags, and instruction guides that accompany the retail sale of a product and are incidental or immaterial to the sale; any product provided free of charge with the required purchase of another product, provided that the sale price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or any item that is part of the sale price of the product. For purposes of this subsection, the term “one non-itemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

**1-K. Certified service provider.** “Certified service provider” means an agent certified under the agreement to perform all of a seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

**1-L. Computer.** “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

**1-M. Computer software.** “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

**2. Business.** (rp)

**2-A. Directly.** “Directly,” when used in relation to production of tangible personal property, refers to those activities or operations which constitute an integral and essential part of production, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to production.

**2-B. Extended cable television services.** (rp)

**2-C. Fabrication services.** (rp)

**2-D. Delivered electronically.** “Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

**2-E. Delivery charges.** “Delivery charges” means charges by the seller of tangible personal property or taxable services for preparation and delivery to a location designated by the purchaser of the property or services. “Delivery charges” includes, but is not limited to, charges for transportation, shipping, postage, handling, crating, and packing.

**2-F. Dietary supplement.** “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that:

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

(1) A vitamin;

(2) A mineral;

(3) An herb or other botanical;

(4) An amino acid;

(5) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(6) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this paragraph;

B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not represented as being a conventional food and is not represented as being for use as a sole item of a meal or of the diet; and

C. Is required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label and as required pursuant to 21 Code of Federal Regulations, Section 101.36.

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

**2-H. Drug.** “Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages, that is:

A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of them;

B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

C. Intended to affect the structure or any function of the body.

**2-I. Electronic.** “Electronic” means relating to technology with electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**3. Farm tractor.** “Farm tractor” means any self-propelled vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

**3-A. Food products.** (rp)

~~**3-B. Grocery staples.** “Grocery staples” means food products ordinarily consumed for human nourishment.~~

~~“Grocery staples” does not include spirituous, malt or vinous liquors; soft drinks, iced tea, sodas or beverages such as are ordinarily dispensed at bars or soda fountains or in connection with bars or soda fountains; medicines, tonics, vitamins and preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form, sold as dietary supplements or adjuncts, except when sold on the prescription of a physician; water, including mineral bottled and carbonated waters and ice; dietary substitutes; candy and confections; and prepared food.~~

**3-C. Flea market.** (rp)

**3-D. Furniture.** (rp)

**3-E. Home service provider.** (rp)

**3-F. Food and food ingredients.** “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include dietary supplements, alcoholic beverages or tobacco.

~~**4. Hotel.** “Hotel” means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants.~~

**4-A. Governing board.** “Governing board” means the governing board of the agreement.

**5. In this State or in the State.** “In this State” or “in the State” means within the exterior limits of the State of Maine and includes all territory within these limits owned by or ceded to the United States of America.

**5-A. Internal human consumption.** “Products for internal human consumption” ~~mean~~ means edible products sold for human nutrition or refreshment and containers or ~~instruments~~ utensils provided simultaneously for the consumption of these products. It does not include ~~spirituous, malt or vinous liquors, medicines, tonics, vitamins,~~ alcoholic beverages, drugs, chewing gum, dietary supplements or ~~cigarettes~~ tobacco.

**5-B. Liquor.** “Liquor” has the same meaning as in Title 28-A, section 2, subsection 16.

**5-C. Lease or rental.** “Lease” or “rental” includes sublease or subrental and means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

A. “Lease” or “rental” includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in Section 7701(h)(1) of the Code.

B. “Lease” or “rental” does not include:

(1) Any transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(2) Any transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this paragraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

**5-D. Load and leave.** “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

~~**6. Living quarters.** “Living quarters” means sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space.~~

**6-A. Manufacturing facility.** “Manufacturing facility” means a site at which are located machinery and equipment used directly and primarily in either the production of tangible personal property intended to be sold or leased ultimately for final use or consumption or the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof. It includes the machinery and equipment and all machinery, equipment, structures and facilities located at the site and used in support of production or associated with the production. “Manufacturing facility” does not include a site at which a retailer is primarily engaged in making retail sales of tangible personal property not produced by the retailer.

**6-B. Mobile telecommunications services.** (rp)

**6-C. Mobility enhancing equipment.** “Mobility enhancing equipment” means equipment that is primarily and customarily used to provide or increase an individual’s ability to move from one place to another, that is appropriate for use either in a home or a motor vehicle, and that is not generally used by persons with normal mobility. “Mobility enhancing equipment” includes repair and replacement parts. “Mobility enhancing equipment” does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

**7. Motor vehicle.** “Motor vehicle” means any self-propelled vehicle designed for the conveyance of passengers or property on the public highways. “Motor vehicle” includes an all-terrain vehicle and a snowmobile as defined in Title 12, section 13001.

**7-A. Vehicle.** “Vehicle” has the same meaning ascribed to that term by Title 29-A, section 101, subsection 91.

**7-B. Machinery and equipment.** “Machinery and equipment” means machinery, equipment and parts and attachments for machinery and equipment, but excludes foundations for machinery and equipment and special purpose buildings used to house or support machinery and equipment.

**7-C. Nonprofit.** “Nonprofit” refers to an organization which has been determined by the United States Internal Revenue Service to be exempt from taxation under Section 501(c) of the Code.

**7-D. Network elements.** (rp)

**7-E. Place of primary use.** (rp)

**8. Passenger automobile.** (rp)

**~~8-A. Prepared food.~~** ~~“Prepared food” means:~~

~~A. Meals served on or off the premises of the retailer;~~

~~B. Food and drinks that are prepared by the retailer and ready for consumption without further preparation; and~~

~~C. All food and drinks sold from an establishment whose sales of food and drinks that are prepared by the retailer account for more than 75% of the establishment’s gross receipts.~~

~~“Prepared food” does not include bulk sales of grocery staples.~~

**8-B. Prepaid calling service.** “Prepaid calling service” means the right to access exclusively telecommunications services that must be paid for in advance that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed, and that is sold in predetermined units or dollars, the number of which declines with use in a known amount. ~~The sale or recharge of the service is considered a sale within the State if the transfer for consideration takes place at the vendor’s place of business in the State. If the sale or recharge of prepaid calling service does not take place at the vendor’s place of business, the sale or recharge is deemed to take place at the customer’s shipping address, or if there is no item shipped, at the customer’s billing address or the location associated with the customer’s mobile telephone number. The sale of the service is deemed to occur on the date of the transfer for consideration of the service.~~

**8-C. Prepaid wireless calling service.** “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount. The sale of the service is deemed to occur on the date of the transfer for consideration of the service.

**8-D. Prepared food.**

A. “Prepared food” means:

(1) Food sold in a heated state or heated by the seller;

(2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. “Eating utensils” does not include a container or packaging used to transport the food.

B. “Prepared food” includes food and food ingredients and dietary supplements, but only when one or more of the requirements set forth in paragraph A are met. “Prepared food” includes all alcoholic beverages sold to be consumed on the premises where sold.

C. “Prepared food” does not include:

(1) Food that is only cut, repackaged, or pasteurized by the seller;

(2) Eggs, fish, meat, poultry, and foods containing these raw animal foods that require cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code in order to prevent food-borne illnesses;

(3) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries);

(4) Food sold in an unheated state by weight or volume as a single item; or

(5) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish pastries, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas, if sold without eating utensils provided by the seller.

**8-E. Prescription.** “Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the State.

**8-F. Prewritten computer software.** “Prewritten computer software” means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Computer software created by combining two or more prewritten computer software programs or portions thereof is prewritten computer software. “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is deemed to be the author or creator only of the person’s modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where a reasonable, separately stated charge for the modification or enhancement is shown on an invoice or other statement of the price given to the purchaser, the modification or enhancement does not constitute prewritten computer software.

## **9. Person. (rp)**

**9-A. Primarily.** “Primarily,” when used in relation to machinery or equipment used in production, means more than 50% of the time during the period that begins on the date on which the machinery or equipment is first placed in service by the purchaser and ends 2 years from that date or at the time that the machinery or equipment is sold, scrapped, destroyed or otherwise permanently removed from service by the taxpayer, whichever occurs first.

**9-B. Production.** “Production” means an operation or integrated series of operations engaged in as a business or segment of a business that transforms or converts personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. “Production” includes film production.

“Production” includes manufacturing, processing, assembling and fabricating operations that meet the definitional requisites, including biological processes that are part of an integrated process of manufacturing organisms or microorganic materials through the application of biotechnology.

“Production” does not include biological processes except as otherwise provided by this subsection, wood harvesting operations, the severance of sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, or activities such as cooking or preparing drinks, meals, food or food products by a retailer for retail sale.

## **9-C. Rental of automobile on short-term basis. (rp)**

**9-D. Reseller.** (rp)

**9-E. Prosthetic device.** “Prosthetic device” means a replacement, corrective, or supportive device worn on or in the human body in order to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. “Prosthetic device” includes repair and replacement parts.

**9-F. Purchase price.** “Purchase price” applies to the measure subject to use tax and has the same meaning as “sale price.”

**9-G. Receive.** “Receive,” as used in section 1818, means:

A. To take possession of tangible personal property;

B. To make first use of services; or

C. To take possession or make first use of digital goods, whichever happens first.

The term “receive” does not include possession by a shipping company on behalf of the purchaser.

**10. Retailer.** “Retailer” means a person who makes retail sales or who is required to register by section 1754-A or 1754-B or who is registered under section 1756.

**10-A. Retail sale.** “Retail sale” means any sale, lease, or rental in the ordinary course of business. “Retail sale” includes the sale of products for internal human consumption for resale through vending machines when sold to a person, more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines, in which case the tax must be paid by the retailer to the State. “Retail sale” does not include:

A. Any casual sale;

B. The sale to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of tangible personal property for resale, lease or rental in the form of tangible personal property, except resale, lease or rental as a casual sale;

C. The sale to a retailer that has been issued a resale certificate pursuant to section 1754-B, subsection 2-B or 2-C, of a taxable service for resale, except resale as a casual sale;

D. The sale to a retailer that is not required to register by section 1754-B, of tangible personal property for resale, lease or rental outside the State in the form of tangible personal property, except resale, lease or rental as a casual sale; or

E. The sale, to a retailer that is not required to register by section 1754-B, of a taxable service for resale outside the State, except resale as a casual sale.

~~**11. Retail sale.** “Retail sale” means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. “Retail sale” also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.~~

~~A. “Retail sale” includes:~~

~~(1) Conditional sales, installment lease sales and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later; and~~

~~(2) Sale of products for internal human consumption to a person for resale through vending machines when sold to a person more than 50% of whose gross receipts from~~

~~the retail sale of tangible personal property are derived from sales through vending machines. The tax must be paid by the retailer to the State.~~

~~B. "Retail sale" does not include:~~

~~(1) Any casual sale;~~

~~(2) Any sale by a personal representative in the settlement of an estate, unless the sale is made through a retailer, or unless the sale is made in the continuation or operation of a business;~~

~~(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented on a short-term basis;~~

~~(4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;~~

~~(5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more;~~

~~(6) The sale, to a person engaged in the business of providing cable or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services; or~~

~~(7) The sale, to a person engaged in the business of renting furniture, or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105.~~

~~**12. Rooming house.** "Rooming house" means every house, cottage, condominium unit, vacation home, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.~~

~~**12-A. Rural community health center.** "Rural community health center" means a person that delivers, or provides facilities for the delivery of, comprehensive primary health care in a place or territory that is classified as rural according to the most recent federal decennial census.~~

~~**13. Sale.** "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase lease or rental of tangible personal property.~~

~~**13-A. Sale at retail.** "Sale at retail" means retail sale.~~

~~**13-B. Sale price.** "Sale price" applies to the measure subject to sales tax and means the total amount of consideration, valued in money, whether received in money or otherwise.~~

~~A. "Sale price" includes cash, credit, property, and services for which tangible personal property or taxable services are sold, leased, or rented, without any deduction for:~~

~~(1) The seller's cost of the property sold;~~

~~(2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;~~

(3) Charges by the seller for any services necessary to complete the sale, other than delivery or installation charges that are separately stated on the invoice, billing, or similar document given to the purchaser;

(4) The value of any property or service that is transferred to the purchaser along with tangible personal property or a taxable service subject to tax under this Part in a bundled transaction; or

(5) Credit for any trade-in, except as provided in section 1765.

B. "Sale price" includes consideration received by the seller from third parties if:

(1) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(2) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(4) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any customer does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

C. "Sale price" does not include:

(1) Discounts that are allowed by a seller and taken by a purchaser on a sale, including cash discounts, term discounts, and coupons that are not reimbursed by a third party;

(2) Interest, finance charges, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser;

(4) Installation charges that are separately stated on the invoice, billing, or similar document given to the purchaser; or

(5) Delivery charges that are separately stated on the invoice, billing, or similar document given to the purchaser.

**14. Sale price.** ~~“Sale price” means the total amount of a retail sale valued in money, whether received in money or otherwise.~~

~~A. “Sale price” includes:~~

- ~~(1) Services which are a part of a retail sale; and~~
- ~~(2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.~~

~~B. “Sale price” does not include:~~

- ~~(1) Discounts allowed and taken on sales;~~
- ~~(2) Allowances in cash or by credit made upon the return of merchandise pursuant to warranty;~~
- ~~(3) The price of property returned by customers, when the full price is refunded either in cash or by credit;~~
- ~~(4) The price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated;~~
- ~~(5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages;~~
- ~~(6) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers’, importers’, alcohol or tobacco excise tax;~~
- ~~(7) The cost of transportation from the retailer’s place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail;~~
- ~~(8) The fee imposed by Title 10, section 1169, subsection 11;~~
- ~~(9) The fee imposed by section 4832, subsection 1; or~~
- ~~(10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B.~~

**14-A. Solar energy equipment.** (rp)

**14-B. Special mobile equipment.** “Special mobile equipment” means any self-propelled vehicle not designed or used primarily for the transportation of persons or property that may be operated or moved only incidentally over the highways, including, but not limited to, road construction or maintenance machinery, farm tractors, lumber harvesting vehicles or loaders, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well drillers and wood sawing equipment.

**14-C. Snack food.** (rp)

**14-D. Serving carrier.** (rp)

**14-E. School.** “School” means a public or incorporated nonprofit primary, secondary or postsecondary educational institution that has a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year and that keeps and furnishes to

students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank.

**15. Storage.** “Storage” includes any keeping or retention in this State of tangible personal property.

**16. Storage or use.** “Storage” or “use” does not include keeping or retention or the exercise of power over tangible personal property brought into this State for the purpose of subsequently transporting it outside the State for use by the purchaser thereafter solely outside the State, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser solely outside the State.

**17. Tangible personal property.** “Tangible personal property” means personal property that ~~may can~~ be seen, weighed, measured, felt, or touched, or that is in any other manner ~~perceived by perceptible~~ to the senses, ~~but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership.~~ “Tangible personal property” includes electricity. ~~“Tangible personal property” includes any computer software that is not a custom, water, gas, steam, and prewritten computer software program.~~

**17-A. Taxable service.** (rp)

**17-B. Taxable service.** “Taxable service” means ~~the rental of living quarters in a hotel, rooming house, tourist or trailer camp;~~ the transmission and distribution of electricity; the rental or lease of ~~an automobile~~ tangible personal property; the sale of prepaid wireless calling service; and the sale of prepaid calling service.

**18. Tax Assessor.** (rp)

**18-A. Telephone or telegraph service.** (rp)

**18-B. Telephone or telegraph service.** (rp)

**18-C. Telecommunications equipment.** (rp)

**18-D. Telecommunications services.** (rp)

**19. Tourist camp.** “Tourist camp” means ~~a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation.~~

**19-A. Tobacco.** “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

**19-B. Transportation equipment.** “Transportation equipment” means any of the following:

A. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

B. Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, and passenger buses that are:

(1) Registered through the International Registration Plan; and

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

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

D. Containers designed for use on, and component parts attached or secured to, any of the kinds of property described in paragraphs A, B and C.

~~**20. Trailer camp.** “Trailer camp” means a place where space is offered with or without service facilities to the public for tenting or for the parking and accommodation of automobile trailers which are used for living quarters and the rental price shall include all service charges paid to the lessor.~~

**20-A. Truck camper.** “Truck camper” means a slide-in camper designed to be mounted on a truck body to provide temporary living quarters for recreational, camping, travel or other use.

**21. Use.** “Use” includes the exercise in this State of any right or power over tangible personal property incident to its ownership, including ~~the derivation of income, whether received in money or in the form of other benefits, by a lessor from the rental of tangible personal property located~~ the distribution of direct mail to recipients in this State.

**22. Camper trailer.** “Camper trailer” has the same meaning as in section 1481, but without any restriction on length.

**23. Video media; video equipment.** (rp)

**24. Watercraft.** “Watercraft” means any type of vessel, boat, canoe or craft designed for use as a means of transportation on water, other than a seaplane, including motors, electronic and mechanical equipment and other machinery, whether permanently or temporarily attached, which are customarily used in the operations of the watercraft.

**Sec. . 36 MRSA §1754-B, sub-§1,** as amended by PL 2005, c. 218, §§18-21, is further amended to read:

**1. Persons required to register.** ~~Except as otherwise provided in this section, the~~ The following persons, other than casual sellers, shall register with the ~~assessor~~ State Tax Assessor and collect and remit taxes in accordance with the provisions of this Part:

A. Every seller of tangible personal property or taxable services, whether or not at retail, that maintains in this State any office, manufacturing facility, distribution facility, warehouse or storage facility, sales or sample room or other place of business;

B. Every seller of tangible personal property or taxable services that does not maintain a place of business in this State but makes retail sales in this State or solicits orders, by means of one or more salespeople within this State, for retail sales within this State;

C. Every lessor engaged in the leasing of tangible personal property located in this State ~~that does not maintain a place of business in this State but makes retail sales to purchasers from this State;~~

D. Every person that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate;

E. Every agent, representative, salesperson, solicitor or distributor that receives compensation by reason of sales of tangible personal property or taxable services made outside this State by a principal for use, storage or other consumption in this State;

~~F. Every person that manages or operates in the regular course of business or on a casual basis a hotel, rooming house or tourist or trailer camp in this State or that collects or receives rents from a hotel, rooming house or tourist or trailer camp in this State;~~

G. Every seller of tangible personal property or taxable services that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. The following activities do not constitute a substantial physical presence for the purpose of this paragraph:

- (1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd-party common carrier;
  - (2) Attending trade shows, seminars or conventions in this State;
  - (3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;
  - (4) Maintaining a bank account or banking relationship in this State; or
  - (5) Using a vendor in this State for printing, drop shipping or telemarketing services;
- and

H. Every person that makes retail sales in this State of tangible personal property or taxable services on behalf of the owner of that property or the provider of those services.

**Sec. . 36 MRSA §1756**, as repealed and replaced by PL 1995, c. 640, §4, is repealed and the following enacted in its place:

**§1756. Voluntary registration**

**1. Registration of sellers.** A seller that is not required to register by section 1754-B may register under the provisions of the Streamlined Sales and Use Tax Agreement and this section. The seller may be registered by an agent. The appointment of the agent must be in writing and must be submitted to the State Tax Assessor if requested by the assessor. By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into the State. Withdrawal or revocation of the State from the agreement does not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the State. The seller may cancel its registration at any time, in accordance with uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting any taxes collected to the State. The assessor may not use registration and collection of sales and use taxes under this section as a factor in determining whether the seller has nexus with the State for any tax at any time.

**2. Method of remittance.** When registering, the seller may select any one of the following methods of remitting the taxes collected:

- A. Model 1, whereby a seller selects a certified service provider as its agent to perform all of the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases; or
- B. Model 2, whereby a seller selects a certified automated system to calculate the amount of tax due on each transaction; or
- C. Model 3, whereby a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system; or
- D. Any other method allowable under Maine law.

**3. Amnesty for registrations.** Subject to the limitations set forth in this section, an amnesty is provided 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. The amnesty will preclude assessment for uncollected or unpaid sales or use tax, penalty or interest with respect to sales made during the period the seller was not registered in the State, provided that:

A. The seller was not registered in the State in the 12-month period preceding the effective date of the State's participation in the agreement; and

B. Registration occurs before or within 12 months after the effective date of the State's participation in the agreement.

Absent the seller's fraud or intentional misrepresentation of a material fact, the amnesty is fully effective 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 36 months. The statute of limitations for asserting a tax liability is tolled during this 36-month period. 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 purchaser.

**4. Limitations on amnesty.** The amnesty is not available to a seller with respect to:

A. Any matter for which the seller has received notice of the commencement of an audit, which audit is not yet finally resolved including any related administrative and judicial processes.

B. Any sales or use taxes already paid or remitted to the state, or taxes collected by the seller.

Sec. . 36 MRSA §1760, sub-§3, as amended by PL 1991, c. 824, Pt. A, §73, is repealed and the following enacted in its place:

**3. Food and food ingredients.** Sales of food and food ingredients, other than prepared food.

Sec. . 36 MRSA §1760, sub-§5, is repealed and the following enacted in its place:

**5. Prescription drugs.** Sales of drugs for human use sold on a doctor's prescription.

Sec. . 36 MRSA §1760, sub-§5-A, as amended by PL 1975, c. 623, §57, is repealed and the following enacted in its place:

**5-A. Prosthetic devices.** Sales of prosthetic devices.

Sec. . 36 MRSA §1760, sub-§6, as amended by PL 1999, c. 502, §§1, 2 and 3, is repealed.

Sec. . 36 MRSA §1760, sub-§9-B, as amended by PL 1999, c. 657, §21, is further amended to read:

**9-B. Residential electricity.** ~~Sale and delivery~~ Sales of the first 750 kilowatt hours of residential electricity per month. For the purpose of this subsection, "residential electricity" means ~~electricity~~ and transmission and distribution of electricity furnished to homes, mobile homes, boarding homes and apartment houses, with the exception of hotels and motels. ~~Where residential electricity is furnished through one meter to more than one residential unit and where the transmission and distribution utility applies its tariff on a per unit basis, the furnishing of electricity is considered a separate sale for each unit to which the tariff applies. For purposes of this subsection, "delivery" means transmission and distribution;~~

Sec. . 36 MRSA §1760, sub-§9-D, as amended by PL 1999, c. 414, §20, is repealed.

Sec. . 36 MRSA §1760, sub-§17 is repealed.

Sec. . 36 MRSA §1760, sub-§18 is repealed.

Sec. . 36 MRSA §1760, sub-§19, as amended by PL 2003, c. 588, §7, is repealed.

Sec. . 36 MRSA §1760, sub-§20, as amended by PL 1991, c. 546, §20, is repealed.

Sec. . 36 MRSA §1760, sub-§23-C, ¶A, as repealed and replaced by PL 2003, c. 688, Pt. B, §12 and affected by §13, is amended to read:

A. Motor vehicles, except ~~automobiles rented for a period of less than one year~~, all-terrain vehicles and snowmobiles as defined in Title 12, section 13001;

Sec. . 36 MRSA §1760, sub-§45, as amended by PL 2005, c. 218, §24, is further amended to read:

**45. Certain property purchased outside the State.** Sales of property purchased and used by the present owner outside the State:

A. If the property is an automobile, as defined in Title 29-A, section 101, subsection 7, and if the owner was, at the time of purchase, a resident of the other state and either employed or registered to vote there;

A-1. If the property is a watercraft that is registered outside the State by an owner who at the time of purchase was a resident of another state and the watercraft is present in the State not more than 30 days during the 12 months following its purchase for a purpose other than temporary storage;

A-2. If the property is a snowmobile or all-terrain vehicle as defined in Title 12, section 13001 and the purchaser is not a resident of the State; or

B. For more than 12 months in all other cases.

Property, other than automobiles, watercraft, snowmobiles and all-terrain vehicles, that is required to be registered for use in this State does not qualify for this exemption unless it was registered by its present owner outside this State more than 12 months prior to its registration in this State. If property required to be registered for use in this State was not required to be registered for use outside this State, the owner must be able to document actual use of the property outside this State for more than 12 months prior to its registration in this State. For purposes of this subsection, “use” does not include storage but means actual use of the property for a purpose consistent with its design. This exemption does not apply to leased property.

Sec. . 36 MRSA §1760, sub-§75, as enacted PL 1989, c. 871, §15, is repealed.

Sec. . 36 MRSA §1760, sub-§82, as reallocated by RR 1999, c. 1, §48, is repealed.

Sec. . 36 MRSA §1760, sub-§83, as reallocated by RR 1999, c. 1, §49, is repealed.

Sec. . 36 MRSA §1760, sub-§85, as reallocated by RR 2001, c. 1, §45, is repealed.

Sec. . 36 MRSA §1760, sub-§88, is enacted to read:

**88. Mobility enhancing equipment.** Sales of mobility enhancing equipment.

Sec. . 36 MRSA §1760, sub-§89, is enacted to read:

**89. Short-term rental of automobiles.** The sale, to a person engaged in the business of renting automobiles for a period of less than one year, of integral parts of automobiles or accessories to automobiles for use in an automobile rented for a period of less than one year.

Sec. . 36 MRSA §1760, sub-§90, is enacted to read:

90. Certain leases and rentals. Leases or rentals of tangible personal property that are subject to tax under chapter 358 or chapter 721.

Sec. . 36 MRSA §1760, sub-§91, is enacted to read:

91. Meals. Sales of food and drink that are subject to tax under chapter 721.

Sec. . 36 MRSA §1760, sub-§92, is enacted to read:

92. Repair services. Charges for repair services that are separately stated on the invoice, billing or similar document given to the purchaser.

Sec. . 36 MRSA §1760, sub-§93, is enacted to read:

93. Arbitration and mediation fees. The fees imposed by Title 10, section 1169, subsection 11.

Sec. . 36 MRSA §1760, sub-§94, is enacted to read:

94. Recycling assistance fees. The fees imposed by section 4832, subsection 1.

Sec. . 36 MRSA §1760, sub-§95, is enacted to read:

95. Lead-acid battery deposits. The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B.

Sec. . 36 MRSA §1760, sub-§96, is enacted to read:

96. Certain associated equipment. The sale, to a person engaged in the business of providing cable or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services.

Sec. . 36 MRSA §1764, as amended by PL 2005, c. 218, §25, is further amended to read:

**§1764. Tax against certain casual sales**

The tax imposed by ~~chapters 211 to 225~~ this Part must be levied upon all ~~casual rentals of living quarters in a hotel, rooming house or tourist or trailer camp and upon all~~ casual sales involving the sale of camper trailers, truck campers, motor vehicles, special mobile equipment ~~except farm tractors and lumber harvesting vehicles or loaders~~, livestock trailers, watercraft or aircraft ~~except those, unless the property is~~ sold for resale at retail sale or to a corporation, partnership, limited liability company or limited liability partnership when the seller is the owner of a majority of the common stock of the corporation or of the ownership interests in the partnership, limited liability company or limited liability partnership. ~~This section does not apply to the rental of living quarters rented for a total of fewer than 15 days in the calendar year, except that a person who owns and offers for rental more than one property in the State during the calendar year is liable for collecting sales tax with respect to the rental of each unit regardless of the number of days for which it is rented.~~ For purposes of this section, “special mobile equipment” does not include farm tractors and lumber harvesting vehicles or loaders.

Sec. . 36 MRSA §1766 is enacted to read:

**§1766. Relief from certain liability.**

A person registered under the provisions of section 1754-B or section 1756, or a certified service provider acting as the agent of such a person, is relieved from additional liability resulting from the undercollection of sales and use tax when relying on erroneous data provided by the State

Tax Assessor regarding tax rates, boundaries or taxing jurisdiction assignments, or when relying on erroneous data provided by the assessor in a taxability matrix adopted by the governing board.

**Sec. . 36 MRSA §1811, first ¶**, as amended by PL 2003, c. 673, Pt. V, §23 and affected by §29, is further amended to read:

### **§1811. Sales tax**

A tax is imposed on the value of all tangible personal property and all taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared food; ¼ of 1% on the value of all fuel, electricity and transmission and distribution of electricity purchased for use at a manufacturing facility and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided.

The tax imposed upon the sale and distribution of gas, water or electricity by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, must be added to the rates so established. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary.

Rental or lease of an automobile for one year or more must be taxed at the time of the lease or rental transaction at 5% of the following: the total monthly lease payment multiplied by the number of payments in the lease or rental, the amount of equity involved in any trade-in and the value of any cash down payment. Collection and remittance of the tax is the responsibility of the person that negotiates the lease transaction with the lessee.

**Sec. . 36 MRSA §1811-A**, as amended by PL 1981, c. 706, §22, is further amended to read:

### **§1811-A. Credit for worthless accounts**

The tax paid on sales represented by accounts charged off as worthless may be credited against the tax due on a subsequent report filed within 3 years of the charge-off, ~~but, if any such accounts are thereafter collected by the retailer, a tax shall be paid upon the amounts so collected.~~ subject to the following provisions:

**1. Definition.** For purposes of this section, a worthless account means a “bad debt” as defined in Section 166 of the Code adjusted to exclude finance charges or interest, sales or use taxes charged on the sale price, uncollectible amounts on property that remains in the possession of the seller until the full sale price is paid, expenses incurred in attempting to collect any debt, and repossessed property.

**2. Period.** A credit may be taken on the return filed for the period during which the account is written off as uncollectible in the claimant’s books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may claim the credit on a return filed for the period in which the account is written off as uncollectible in the claimant’s books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

**3. Subsequent collection.** If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

**4. Refund authorized.** When the amount of the allowable credit exceeds the amount of taxable sales for the period during which the account is written off, a refund claim may be filed as provided in section 2011. For purposes of this subsection, the date of overpayment is the due date of the return on which the credit could first be claimed.

**5. Claim by service provider.** If the seller has selected a certified service provider as an agent to perform all the seller's sales or use tax functions, the service provider may claim the credit provided by this section on behalf of the seller. The service provider must credit or refund the full amount of any refund or credit received to the seller.

**6. Application of payments.** For the purposes of reporting a payment received on a previously claimed worthless account, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

**7. Allocation.** The bad debts may be allocated among the member states if the books and records of the person claiming the bad debt allowance support such an allocation.

**Sec. . 36 MRSA §1812, sub-§1,** as amended by PL 1999, c. 790, Pt. A, §48, is repealed and the following enacted in its place:

**1. Computation.** Every retailer must add the sales tax imposed by section 1811 to the sale price on all sales of tangible personal property and taxable services that are subject to tax under this Part. The tax when so added is a debt of the purchaser to the retailer until it is paid, and is recoverable at law by the retailer from the purchaser in the same manner as the sale price. When the sale price involves a fraction of a dollar, the tax computation must be carried to the third decimal place, then rounded down to the next whole cent whenever the third decimal place is 1, 2, 3 or 4 and rounded up to the next whole cent whenever the third decimal place is 5, 6, 7, 8 or 9.

**Sec. . 36 MRSA §1812, sub-§2,** as amended by PL 1991, c. 846, §24, is further amended to read:

**2. Several items.** When several purchases are made together and at the same time, the tax ~~must~~ may be computed on each item individually or on the total amount of the several items, ~~except that purchases taxed at different rates must be separately totaled~~ as the retailer may elect.

**Sec. . 36 MRSA §1812, sub-§4,** is enacted to read:

**4. Effective date.** The effective date of tax rate changes that are applicable to services provided over a period starting before and ending after the statutory effective date is as follows:

A. For a rate increase, the new rate applies to billing periods that start on or after the effective date; and

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

**Sec. . 36 MRSA §1814, sub-§4,** is enacted to read:

**4. Recovery by purchaser.** A cause of action against a retailer for over-collected sales or use taxes does not accrue until a purchaser has provided written notice to the retailer and the retailer has had sixty days to respond. The notice to the retailer must contain the information necessary to determine the validity of the request. In connection with a purchaser's request to a retailer for return of over-collected sales or use taxes, a retailer will be presumed to have a reasonable business practice if, in the collection of sales or use taxes, the retailer uses either a provider or a system, including a proprietary system, that is certified by the governing board or the State, and has remitted to the State all taxes collected less any deductions or credits otherwise provided by law. These

customer refund procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the retailer.

Sec. . 36 MRSA §1817 is enacted to read:

### **§1817. Sourcing rules**

**1. Application.** The provisions of this section only apply to determine a seller's obligation to pay or to collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product.

**2. General sourcing rules.** Retail sales of tangible personal property and taxable services are sourced as provided in this subsection. For purposes of this subsection retail sale does not include lease or rental, except lease or rental of transportation equipment.

A. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

B. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or by the purchaser's donee, designated as such by the purchaser, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

C. When paragraphs A and B do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

D. When paragraphs A, B and C do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

E. When paragraphs A, B, C and D do not apply, including the circumstance in which the seller is without sufficient information to apply the rules set forth in those paragraphs, the sale is sourced to the location from which the 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. In the case of a sale of prepaid wireless calling service, the sale is sourced to the location associated with the mobile telephone number.

**3. Sourcing of lease transactions.** The lease or rental of tangible personal property, except lease or rental of transportation equipment and except as otherwise provided in subsection 4, are sourced as follows:

A. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced in accordance with the provisions of subsection 2. Periodic payments made subsequent to the first payment are sourced to the primary property location for the period covered by each payment. The primary property location is an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

B. For a lease or rental that does not require recurring periodic payments, the payment is sourced in accordance with the provisions of subsection 2.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

**4. Sourcing of certain vehicle leases.** The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment are sourced as follows:

A. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location for the period covered by that payment. The primary property location is an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at different locations.

B. For a lease or rental that does not require recurring periodic payments, the payment is sourced in accordance with the provisions of subsection 2.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

**Sec. . 36 MRSA §1861**, as amended by PL 1995, c. 640, §6, is further amended to read:

#### **§1861. Imposition**

A tax is imposed, at the ~~respective~~ rate provided in section 1811, on the storage, use or other consumption in this State of tangible personal property or a taxable service, the sale of which would be subject to tax under section 1764 or 1811. Every person so storing, using or otherwise consuming is liable for the tax until the person has paid the tax or has taken a receipt from the seller, as duly authorized by the assessor, showing that the seller has collected the sales or use tax, in which case the seller is liable for it. Retailers registered under section 1754-B or 1756 shall collect the tax and make remittance to the assessor. The amount of the tax payable by the purchaser is that provided in the case of sales taxes by section 1812. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for the retailer's own use, use tax liability accrues at the date of withdrawal.

**Sec. . 36 MRSA §1862**, as amended by PL 1987, c. 772, §24, is further amended to read:

#### **§1862. Taxes paid in other jurisdictions**

~~The use tax provisions of chapters 211 to 225 shall~~ imposed by this Part does not apply with respect to the use, storage or other consumption in this State of purchases outside the State where the purchaser has paid a sales or use tax equal to or greater than the amount imposed by chapters 211 to 225 this Part in another taxing jurisdiction, the proof of payment of the tax to be according to rules made by the State Tax Assessor. If the amount of sales or use tax paid in another taxing jurisdiction is not equal to or greater than the amount of tax imposed by ~~chapters 211 to 225~~ this Part, then the purchaser shall pay to the State Tax Assessor an amount sufficient to make the total amount of tax paid in the other taxing jurisdiction and in this State equal to the amount imposed by ~~chapters 211 to 225~~ this Part. When tangible personal property is leased outside the State and subsequently brought into the State, no credit may be allowed under this section for sales or use tax paid in another jurisdiction with respect to periodic payments that are attributable to periods during which the property is primarily located in this State.

**Sec. . 36 MRSA §1951-A, sub-§1**, as enacted by PL 1991, c. 9, Pt. E, §24, is amended to read:

**1. Monthly return and payment.** Every retailer shall file with the State Tax Assessor, on or before the ~~15<sup>th</sup>~~ 20<sup>th</sup> day of each month, a ~~report~~ return made under the ~~pains and penalties of perjury on such a form as prescribed by the State Tax Assessor may prescribe that discloses~~ assessor. The return must report the total sale price of all sales made during the preceding calendar month and such other information as the ~~State Tax Assessor~~ assessor requires. The ~~State Tax Assessor~~ assessor may permit the filing of returns other than monthly. The ~~State Tax Assessor~~ assessor, by rule, may waive reporting nontaxable sales. Upon application of a retailer, the ~~State Tax Assessor~~ assessor shall issue a classified permit establishing the percentage of exempt sales. The classified permit may be amended or revoked ~~as to its classification whenever~~ if the ~~State Tax Assessor~~ assessor determines that the percentage of exempt sales is inaccurate. The ~~State Tax Assessor~~ assessor may for good cause extend for not more than 30 days the time for making returns required under ~~chapters 211 to 225~~ this Part. Every person subject to the use tax shall file similar ~~reports~~ returns, at similar dates, and pay the tax or furnish a receipt for the ~~same tax~~ from a registered retailer.

**Sec. . 36 MRSA §1966** is enacted to read:

### **§1966. Direct payment permits**

A manufacturer or utility that purchases tangible personal property or taxable services may apply to the State Tax Assessor for a direct payment permit. If the assessor finds that (1) the collection of the taxes imposed by this Part will not be jeopardized by the issuance of such a permit; (2) because of the nature of the applicant's business, the permit will significantly reduce the work of administering the taxes imposed by this Part; (3) the applicant's accounting system will clearly indicate the amount of tax that the applicant owes under this Part; and (4) the applicant makes taxable purchases in sufficient volume to justify the expense of regular audits by the assessor, the assessor may, in the assessor's discretion, issue such a permit to the applicant. The assessor, by rule, may provide for further limitations and requirements regarding the issuance and use of a direct pay permit. The holder of a direct pay permit must make a determination of the taxability of each purchase and then report and pay the applicable tax due directly to the assessor. The direct pay permit may be suspended or revoked by the assessor at any time if the assessor determines that the collection of any tax due from the permit holder is in jeopardy or that the permit holder has not complied with the conditions to which the permit is subject.

**Sec. . 36 MRSA §1967** is enacted to read:

### **§1967. Direct mail sourcing**

The State Tax Assessor, by rule, may establish procedures whereby a purchaser of direct mail that is not a holder of a direct payment permit shall provide to the seller in conjunction with the purchase either a direct mail form prescribed by the assessor or information to show the jurisdictions to which the direct mail is delivered to recipients. Upon receipt of a direct mail form, the seller is relieved of its obligation to collect, pay, or remit the applicable tax, and the purchaser is obligated to pay the applicable tax directly to the assessor. The direct mail form remains in effect for all future sales of direct mail by that seller to that purchaser until it is revoked in writing. Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation for tax on any transaction where the seller has collected tax in accordance with the delivery information provided by the purchaser. If the purchaser of direct mail is not a holder of a direct payment permit and does not provide the seller with either a direct mail form or delivery information, the seller shall collect the tax in accordance with section 1818, subsection 2, paragraph E.

Sec. . 36 MRSA §1968 is enacted to read:

**§1968. Multiple points of use**

**1. Certificate of exemption.** The State Tax Assessor, by rule, shall establish procedures whereby a business purchaser that is not a holder of a direct payment permit that knows at the time of its purchase of a digital good, computer software or a taxable service that the digital good, computer software or taxable service will be concurrently available for use in more than one jurisdiction must provide to the seller an exemption certificate claiming multiple points of use in a form prescribed by the assessor. Upon receipt of the exemption certificate, the seller is relieved of its obligation to collect, pay, or remit the applicable tax. The exemption certificate remains in effect for all future sales by that seller to that purchaser, except as to the specific apportionment of subsequent sales, until it is revoked in writing.

**2. Payment of tax.** A purchaser that provides an exemption certificate claiming multiple points of use shall report and pay the applicable tax directly to the assessor. The tax due must be calculated as if the apportioned amount of the digital good, computer software or taxable service had been delivered to each jurisdiction to which the sale is apportioned. The purchaser may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's books and records kept in connection with the sale.

**3. Certification of apportionment.** If the seller knows that the digital good, computer software or taxable service will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection 1, the seller may cooperate with the purchaser to determine the correct apportionment. The purchaser and seller may use any reasonable, but consistent and uniform, method of apportionment that is supported by the seller's and purchaser's books and records kept in connection with the sale. If the purchaser certifies to the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit the tax pursuant to subsection 2. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the information certified by the purchaser.

**4. Direct payment permit.** A holder of a direct payment permit under section 1966 is not required to provide the exemption certificate required by subsection 1 to the seller, but must follow the provisions of subsection 2 in apportioning the tax due on a digital good, computer software or taxable service that will be concurrently available for use in more than one jurisdiction.

**5. Sourcing.** If the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate as required in subsection 1 or certification pursuant to subsection 3, the seller shall collect and remit the tax based on the provisions of Section 1818, subsection 2.

**6. Generally.** This section does not limit a person's obligation to pay sales or use tax to a state in which a digital good, computer software or taxable service is concurrently available for use. This section does not limit a person's ability to claim a credit pursuant to section 1862 for sales or use tax legally due and paid in another taxing jurisdiction. The provisions of this section do not apply to computer software received in person by a business purchaser at a business location of the seller. As used in this section, "computer software" includes, without limitation, computer software delivered electronically, by load and leave, or in tangible form.

Sec. . 36 MRSA §2015, as enacted by PL 1993, c. 701, §8 and affected by §10, is repealed.

Sec. . 36 MRSA §2551, sub-§1-C, is enacted to read:

**1-C. Ancillary services.** “Ancillary services” means services that are associated with or incidental to the provision of telecommunications services including, but not limited to, conference bridging service, detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

Sec. . 36 MRSA §2551, sub-§1-D, is enacted to read:

**1-D. Call-by-call basis.** “Call-by-call basis” means any method of charging for telecommunications services where the price is measured by individual calls.

Sec. . 36 MRSA §2551, sub-§1-E, is enacted to read:

**1-E. Conference bridging service.** “Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

Sec. . 36 MRSA §2551, sub-§1-F, is enacted to read:

**1-F. Detailed telecommunications billing service.** “Detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

Sec. . 36 MRSA §2551, sub-§1-G, is enacted to read:

**1-G. Directory assistance.** “Directory assistance” means an ancillary service of providing telephone number information and/or address information.

Sec. . 36 MRSA §2551, sub-§5-A, is enacted to read:

**5-A. International telecommunications service.** “International telecommunications service” means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. For purposes of this subsection, the United States includes the District of Columbia and a territory or possession of the United States.

Sec. . 36 MRSA §2551, sub-§5-B, is enacted to read:

**5-B. Interstate telecommunications service.** “Interstate telecommunications service” means a telecommunications service that originates in one United States state, territory or possession and terminates in a different United States state, territory or possession. For purposes of this subsection, “United States state” includes the District of Columbia.

Sec. . 36 MRSA §2551, sub-§6-A, is enacted to read:

**6-A. Mobile wireless service.** “Mobile wireless service” means a telecommunications service that is transmitted, conveyed or routed, regardless of the technology used, where the origination point or termination point or both of the transmission, conveyance or routing is not fixed. “Mobile wireless service” includes, but is not limited to, telecommunications services provided by a commercial mobile radio service provider.

Sec. . 36 MRSA §2551, sub-§8, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:

**8. Place of primary use.** “Place of primary use” means the street address representative of where a customer’s use of mobile telecommunications services primarily occurs, ~~which~~. The place of primary use must be either the residential street address or the primary business street address of the customer and, in the case of mobile telecommunications services, it must also be located within

the licensed service area of the home service provider. For purposes of determining the place of primary use, “customer” means the person ~~or entity~~ that contracts with the home service provider for ~~mobile~~ telecommunications services, or, if the ~~end user of such person~~ that utilizes the telecommunications services is not the contracting party, the person that ~~is the end user of such~~ utilizes the services. The term “customer” does not include a reseller of ~~mobile~~ telecommunications services; or a servicing facilities-based carrier under an agreement providing mobile telecommunications services to a ~~serve the~~ customer outside the a home service provider’s licensed service area.

**Sec. . 36 MRSA §2551, sub-§8-A**, is enacted to read:

**8-A. Post-paid calling service.** “Post-paid calling service” means a telecommunications service obtained by making payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by means of a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. “Post-paid calling service” includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except that it is not exclusively a telecommunications service.

**Sec. . 36 MRSA §2551, sub-§9**, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:

**9. Prepaid calling service.** “Prepaid calling service” means the right to access exclusively telecommunications services that must be paid for in advance and that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed, and that is sold in predetermined units or dollars, the number of which declines with use in a known amount.

**Sec. . 36 MRSA §2551, sub-§9-A**, is enacted to read:

**9-A. Prepaid wireless calling service.** “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

**Sec. . 36 MRSA §2551, sub-§9-B**, is enacted to read:

**9-B. Private communication service.** “Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected. It includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels. A “communications channel” is a physical or virtual path of communications over which signals are transmitted between or among termination points, and a “termination point” is the location where the customer either inputs or receives the communications.

**Sec. . 36 MRSA §2551, sub-§15**, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is repealed.

**Sec. . 36 MRSA §2551, sub-§15-A**, is enacted to read:

**15. Sale price.** “Sale price” means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in

money, whether received in money or otherwise, without any deduction for the cost of materials used, labor or service cost, interest, losses and any other expense of the seller.

A. “Sale price” includes the value of any property or service that is transferred to the purchaser along with a service subject to tax under this chapter in a bundled transaction.

B. “Sale price” includes consideration received by the seller from third parties if:

(1) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(2) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(4) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A “preferred customer” card that is available to any customer does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

B. “Sale price” does not include:

(1) Discounts allowed and taken on sales;

(2) Allowances in cash or by credit made upon the return of services pursuant to warranty;

(3) The price of services rejected by customers when the full sale price is refunded either in cash or by credit; or

(4) The amount of any tax imposed by the United States or the State on or with respect to the sale of a service, whether imposed upon the seller or the consumer.

**Sec. . 36 MRSA §2551, sub-§16-A, is enacted to read:**

**16-A. Service address.** “Service address” means:

A. The location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid; or

B. If the location described in paragraph A is not known, the origination point of the signal of the telecommunications services first identified by either the seller’s telecommunications system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller; or

C. If the locations described in paragraphs A and B are not known, the customer's place of primary use.

**Sec. . 36 MRSA §2551, sub-§20**, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is repealed.

**Sec. . 36 MRSA §2551, sub-§20-A**, is enacted to read:

**20-A. Telecommunications services.** “Telecommunications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. “Telecommunications services” includes transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether the service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. Telecommunications service does not include:

A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

B. Installation or maintenance of wiring or equipment on a customer's premises;

C. Tangible personal property;

D. Advertising, including but not limited to directory advertising;

E. Billing and collection services provided to third parties;

F. Internet access service;

G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

H. Ancillary services; or

I. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ringtones.

**Sec. . 36 MRSA §2551, sub-§20-B**, is enacted to read:

**20-B. Vertical service.** “Vertical service” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

**Sec. . 36 MRSA §2551, sub-§21-A**, is enacted to read:

**21-A. Voice mail service.** “Voice mail service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Sec. . 36 MRSA §2552, sub-§1, ¶¶J and K, as enacted by PL 2005, c. 386, Pt. S, §6 and affected by §9, are amended to read:

J. Personal support services; and

K. Residential training services; and

Sec. . 36 MRSA §2552, sub-§1, ¶L, is enacted to read:

L. Ancillary services.

Sec. . 36 MRSA §2556, sub-§1, as enacted by PL 2003, c. 673, Pt. V, §25 and affected by §29, is amended to read:

**1. Identifying place of primary use.** ~~Mobile telecommunications services provided to a customer whose place of primary use is located in this State, the charges for which are billed by or for the customer's home service provider, are deemed to be provided at the customer's place of primary use.~~ A home service provider is responsible for obtaining and maintaining a record of a customer's place of primary use. Subject to subsection 2 and if the home service provider's reliance on the information provided by its customer is in good faith, the home service provider:

A. May rely on the applicable residential or business street address supplied by the home service provider's customer; and

B. May not be held liable for any additional taxes under this Part based on a different determination of the place of primary use.

Sec. . 36 MRSA §2556-A is enacted to read:

### **§2556-A. Telecommunications sourcing**

**1. Call-by-call basis.** Except as otherwise provided in subsection 3, a sale of telecommunications services sold on a call-by-call basis must be sourced to the taxing jurisdiction where the call originates and terminates, if the call originates and terminates in the same jurisdiction, or otherwise to the taxing jurisdiction where the call either originates or terminates and in which the customer's service address is also located.

**2. Other than call-by-call basis.** Except as provided in subsection 3, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

**3. Exceptions.** The sale of the following telecommunications services must be sourced as follows:

(A) A sale of a mobile telecommunications service is sourced to the customer's place of primary use.

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

(C) A sale of a private communication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to the jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction is sourced to that jurisdiction.

(3) Service for a separate charge for segments of a channel between two customer channel termination points located in different jurisdictions is sourced fifty percent to each of those jurisdictions.

(4) Service for segments of a channel located in more than one jurisdiction that are not separately billed is sourced to each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in that jurisdiction by the total number of customer channel termination points.

Sec. . 36 MRSA §2557, sub-§30, as amended by PL 2005, c. 218, §35, is further amended to read:

**30. Sales for resale.** Sales of services to another service provider for resale; ~~and~~

Sec. . 36 MRSA §2557, sub-§31, as enacted by PL 2005, c. 218, §36, is amended to read:

**31. Construction contracts with exempt organizations.** Sales to a construction contractor or its subcontractor of fabrication services that are to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided-;

Sec. . 36 MRSA §2557, sub-§§32 through 35, are enacted to read:

**32. Prepaid calling service.** Prepaid calling service;

**33. Prepaid wireless calling service.** Prepaid wireless calling service;

**34. International telecommunications service.** International telecommunications service;

and

**35. Interstate telecommunications service.** Interstate telecommunications service.

Sec. . 36 MRSA c. 721 is enacted to read:

## CHAPTER 721

### MEALS AND RENTALS TAX

#### §4841. Short title

The tax imposed in this chapter may be known and cited as the Maine Meals and Rentals Tax.

#### §4842. Definitions

The following words, terms and phrases have the following meanings when used in this chapter, except where the context clearly indicates a different meaning:

**1. Alcoholic beverages.** “Alcoholic beverages” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

**2. Automobile.** “Automobile” means a self-propelled 4-wheel motor vehicle designed primarily to carry passengers and not designed to run on tracks.

**3. Casual sale or rental.** “Casual sale” or “casual rental” means an isolated sale or rental that is not in the ordinary course of repeated and successive transactions of like character by the person making the sale or rental.

**4. Eating establishment.** “Eating establishment” means an establishment, more than 75% of whose gross receipts from sales of food and drink are attributable to sales of meals prepared by that

establishment. The term includes, but is not limited to, a cafe, lunch counter, private or social club, cocktail lounge, hotel, catering business, tavern, diner, snack bar, dining room, mobile eating place, doughnut shop, bagel shop, sandwich shop, pizza parlor, dairy bar or other place or establishment where meals are served, whether or not the serving of meals is the primary function or activity of the establishment.

**5. Grocery staples.** “Grocery staples” means food and drink products that are not ordinarily sold for immediate consumption, except that the term does not include food and drink sold in a heated state or alcoholic beverages.

**6. Living quarters.** “Living quarters” means sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space.

**7. Meal.** “Meal” means food and drink products, other than grocery staples, sold or served by an eating establishment.

**8. Nonprofit.** “Nonprofit” refers to an organization that has been determined by the United States Internal Revenue Service to be exempt from taxation under Section 501(c) of the Code.

**9. Operator.** “Operator” means any person who:

A. Operates an eating establishment;

B. Makes rentals of living quarters or receives rents from rentals of living quarters; or

C. Makes rentals of automobiles for a period of less than one year, except on a casual basis.

“Operator” does not include a person who makes rentals of living quarters or receives rents from rentals of living quarters rented for a total of fewer than 15 days in the calendar year, except that a person who owns and offers for rental more than one property in Maine during the calendar year is an operator.

**10. Rural community health center.** “Rural community health center” means a person that delivers, or provides facilities for the delivery of, comprehensive primary health care in a place or territory that is classified as rural according to the most recent federal decennial census.

**11. Sale price.** “Sale price” means the total amount of consideration, valued in money, whether received in money or otherwise.

A. “Sale price” includes cash, credit, property, and services for which property or services are sold, without any deduction for:

(1) The seller’s cost of property sold, materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(2) Charges by the seller for any services necessary to complete the sale, other than delivery charges that are separately stated on the invoice, billing, or similar document given to the purchaser; or

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

B. “Sale price” includes consideration received by the seller from third parties if:

(1) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(2) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

4. One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A “preferred customer” card that is available to any customer does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

C. “Sale price” does not include:

(1) Discounts that are allowed by a seller and taken by a purchaser on a sale, including cash discounts, term discounts, and coupons that are not reimbursed by a third party;

(2) Interest, finance charges, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; or

(4) Delivery charges that are separately stated on the invoice, billing, or similar document given to the purchaser.

**12. School.** “School” means a public or incorporated nonprofit primary, secondary or post-secondary educational institution that has a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year, and that keeps and furnishes to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank.

### **§4843. Meals and rentals tax**

**1. Tax imposed.** A tax is imposed at the rate of 7% on the value of all sales of meals and all rentals of living quarters and at the rate of 10% on the value of all rentals of automobiles for a period of less than one year. Value is measured by the sale price, except as otherwise provided. The value of a meal or rental does not include any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by the operator to its employees as wages. The value of a meal does not include any amount paid with federal food stamps or Women, Infants and Children (WIC) Special Supplemental Food Program food instruments distributed by the Department of Health and Human Services.

**2. Computation.** Every operator must add the tax imposed by this chapter to the sale price on all sales of meals, rentals of living quarters and rentals of automobiles for a period of less than one year. The tax when so added is a debt of the purchaser to the operator until it is paid, and is recoverable at law by the operator from the purchaser in the same manner as the sale price. When the sale price involves a fraction of a dollar, the tax computation must be carried to the third decimal place, then rounded down to the next whole cent whenever the third decimal place is 1, 2, 3 or 4 and rounded up to the next whole cent whenever the third decimal place is 5, 6, 7, 8 or 9. Breakage under this section shall be retained by the operator as compensation for the collection.

**3. Excessive collection prohibited.** Any person who knowingly charges or collects as the tax due on the value of a sale of a meal, a rental of living quarters or a rental of an automobile for a period of less than one year an amount in excess of that provided by this section commits a Class E crime.

**4. Tax a levy on consumer.** The liability for, or the incidence of, the tax imposed by this chapter is declared to be a levy on the consumer. The operator shall add the amount of the tax to the sale price of meals and rentals subject to tax under this chapter and may state the amount of the tax separately from the sale price on price display signs, sales or delivery slips, bills and statements which advertise or indicate the sale price of those meals or rentals.

#### **§4844. Return and payment of tax**

**1. Monthly return required.** Every operator shall file with the State Tax Assessor, on or before the 20<sup>th</sup> day of each month, a return made under the penalties of perjury on a form prescribed by the assessor. The return must report the total sale price of all sales of meals, rentals of living quarters and rentals of automobiles for a period of less than one year made during the preceding calendar month and such other information as the assessor requires. The assessor may permit the filing of returns other than monthly. The assessor, by rule, may waive reporting nontaxable sales and rentals. The assessor may for good cause extend for not more than 30 days the time for making returns required under this chapter.

**2. Payment of tax.** The tax imposed by this chapter is due and payable at the time of the sale or rental. Upon terms and conditions that the assessor may prescribe, the assessor may permit a postponement of payment to a date not later than the date on which the sale or rental is required to be reported.

#### **§4845. Registration required**

**1. Persons required to register.** The following persons shall register with the State Tax Assessor and collect and remit taxes in accordance with the provisions of this chapter:

- A. Every person that makes sales of meals in this State, other than casual sellers;**
- B. Every person that rents living quarters or receives rents from rentals of living quarters in this State in the regular course of business or on a casual basis; and**
- C. Every person that makes rentals of automobiles for a period of less than one year in this State, other than casual renters.**

**2. Registration certificate.** Application forms for registration certificates must be prescribed and furnished free of charge by the assessor. The assessor shall issue a registration certificate to each applicant that properly completes and submits an application form. A separate application must be completed and a separate registration certificate issued for each place of business. A registration certificate issued pursuant to this section is nontransferable and is not a license within the meaning

of that term in the Maine Administrative Procedure Act. If the operator maintains a place of business in this State, the registration certificate must be conspicuously displayed at that place of business

**3. Failure to register.** A person who is required by this section to register with the assessor and who makes sales of meals or rentals of living quarters or rentals of automobiles for a period of less than one year in this State without being so registered commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

**4. Revocation of registration.** The assessor may revoke the registration certificate of an operator who has failed to file with the assessor a return required under this chapter within 15 days after the due date or who has failed to file, within 15 days after receipt of notice, a bond or deposit required under section 4846 or who has failed to pay any tax required by this chapter that is shown to be due on a return filed by the operator, or admitted to be due by the operator, or has been determined to be due by the assessor and that determination has become final. The revocation is reviewable in accordance with section 151. The registration certificate is suspended from the date of notice of the suspension until the delinquent tax is paid or a bond or deposit required under section 4846 is filed with the assessor or it is determined by an appropriate court that revocation is not warranted.

**5. Making sales or rentals after revocation.** A person whose registration certificate has been revoked by the assessor who continues to make sales of meals or rentals of living quarters or rentals of automobiles for a period of less than one year in this State commits a Class D crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

#### **§4846. Bonds**

If the State Tax Assessor deems it necessary or advisable, either as a condition for issuance or subsequent to the issuance of a registration certificate pursuant to this chapter, the assessor may require from an operator a bond, written by a surety company qualified to do business in this State, in an amount and upon conditions determined by the assessor. In lieu of a bond the assessor may accept, for delivery to the custody of the Treasurer of State, a deposit of money or securities in an amount and of a kind approved by the assessor. The Treasurer of State must accept the deposit and keep it safely subject to the instructions of the assessor.

#### **§4847. Advertising of payment by operator**

It is unlawful for any operator to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax imposed by this chapter or any part of it will be assumed or absorbed by the operator, or that it will not be added to or included in the price of a taxable meal or rental, or if added or included that it or any part of it will be refunded. Any person who violates any part of this section is guilty of a Class E crime.

#### **§4848. Overpayments; refunds**

If the State Tax Assessor determines, upon written application by a taxpayer or during the course of an audit, that any tax under this chapter has been paid more than once or has been erroneously or illegally computed, the assessor shall certify to the State Controller the amount paid in excess of that legally due. That amount must be credited by the assessor on any taxes then due from the taxpayer and the balance refunded to the taxpayer or its successor in interest, but no such credit or refund may be allowed unless within 3 years from the date of overpayment either a written petition stating the grounds upon which the refund or credit is claimed is filed with the assessor or the overpayment is discovered on audit. Interest at the rate determined pursuant to section 186 must be paid on any balance refunded pursuant to this chapter from the date the return listing the

overpayment was filed or the date the payment was made, whichever is later, except that in cases of excessive or erroneous collections interest must be paid in accordance with section 4849, subsection 3. At the election of the assessor, unless the taxpayer specifically requests a cash refund, the refund may be credited to the taxpayer's meals and rentals tax account, but in the case of a credit no further interest may accrue from the date of that election. The taxpayer may not apply for a refund of any amount assessed when administrative and judicial review under section 151 has been completed.

A taxpayer dissatisfied with the decision of the assessor upon a written request for refund filed under this section may request reconsideration and appeal from the reconsideration to the Superior Court in the same manner and under the same conditions as in the case of assessments made under chapter 7. The decision of the assessor upon a written request for refund becomes final as to law and fact in the same manner and under the same conditions as in the case of assessments made under chapter 7.

#### **§4849. Excessive and erroneous collections**

**1. Tax liability.** Whenever the tax collected by an operator for any period exceeds that provided by law, whether the excess is attributable to the collection of tax on exempt or nontaxable transactions or to erroneous computation, the total amount collected, excluding only that portion of the excess that has been returned or credited to the person or persons from whom it was collected, constitutes a tax liability of the operator that must be reported and paid at the time and in the manner provided by section 4844.

**2. Tax liability subject to assessment, collection and enforcement.** The tax liability specified in subsection 1 is subject to assessment, collection and enforcement by the State Tax Assessor as provided in chapter 7.

**3. Refund or credit.** The assessor shall refund or credit an amount that has been paid by or collected from an operator pursuant to this section only upon submission of proof to the satisfaction of the assessor that the amount has been returned or credited to the person or persons from whom it was originally collected. The assessor shall pay interest in such cases only upon submission of proof to the satisfaction of the assessor that interest was included in the repayment by the operator to that person or persons.

#### **§4850. Continuous residence; refund and credit**

Rental of living quarters to any person who resides continuously for 28 days or more at any one establishment is not subject to the tax imposed by this chapter if the person does not maintain a primary residence at some other location or the person is residing away from that person's primary residence in connection with employment or education. Any tax paid pursuant to this chapter by such a person to the operator of the establishment during the initial 28-day period must be refunded to the person by the operator. If the tax has been reported and paid to the State Tax Assessor by the operator, it may be taken as a credit by the operator on the return filed by the operator under this chapter covering the month in which the refund was made to the person.

#### **§4851. Exempt sales and rentals**

The following sales and rentals are not subject to the tax imposed by this chapter:

**1. Exemptions by constitutional provisions.** Any sale or rental that this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

**2. Casual sale or rental.** Casual sales of meals and casual rentals of automobiles for a period of less than one year.

**3. Schools.** Sales of meals served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school, and rental charged for living or sleeping quarters or housekeeping accommodations to any student necessitated by attendance at a school.

**4. Certain institutions.** Sales of meals served to patients of hospitals licensed by the State for the care of human beings and other institutions licensed by the State for the hospitalization or nursing care of human beings, or institutions, agencies, hospitals, boarding homes and boarding houses licensed by the Department of Health and Human Services under Title 22, Subtitle 6 and Title 22, section 1781;

**5. Area agencies on aging.** Sales of meals sold by hospitals, schools, long-term care facilities, food contractors and restaurants to incorporated nonprofit area agencies on aging for the purpose of providing meals to the elderly;

**6. Congregate housing facilities.** Sales of meals sold to residents of incorporated nonprofit church-affiliated congregate housing facilities for the elderly in which at least 75% of the units are available for leasing to eligible lower-income residents;

**7. Colleges.** Sales of meals served by a college to employees of the college when the meals are purchased with debit cards issued by the college.

**8. Camps.** Rental charged for living or sleeping quarters or housekeeping accommodations at camps that are entitled to exemption from property tax under section 652, subsection 1.

**9. Hospitals and nursing facilities.** Rental charged for living or sleeping quarters in an institution licensed by the State for the hospitalization or nursing care of human beings.

**10. Schools and school-sponsored organizations.** Sales of meals sold by elementary and secondary schools and by student organizations sponsored by those schools, including booster clubs and student or parent-teacher organizations, as long as the profits from the sales are used to benefit those schools or student organizations or are used for a charitable purpose.

**11. Certain meals and lodging.** The value of meals or lodging provided to employees at their place of employment, when the value of those meals or that lodging is allowed as a credit toward the wages of those employees.

**12. Auxiliary organization of American Legion.** Sales of meals sold by a nonprofit auxiliary organization of the American Legion in connection with a fund-raising event sponsored by the auxiliary organization if the meals and related items and services are provided in a room that is separate from the lounge facilities, if any, of the American Legion and patrons are prohibited from taking alcoholic beverages from the lounge facilities to the separate room where the meals are provided.

#### **§4852. Persons exempt from tax**

**1. Exempt entities.** Sales or rentals made directly to the following persons are not subject to tax under this chapter.

A. The State or any political subdivision of the State, the federal government, or any unincorporated agency or instrumentality of either of them or any incorporated agency or instrumentality of them wholly owned by them.

B. Incorporated hospitals.

C. Incorporated nonprofit nursing homes licensed by the Department of Health and Human Services.

D. Incorporated nonprofit assisted housing programs for the elderly licensed by the Department of Health and Human Services.

E. Incorporated nonprofit residential care facilities licensed by the Department of Health and Human Services.

F. Incorporated nonprofit home health agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended.

G. Incorporated nonprofit rural community health centers engaged in, or providing facilities for, the delivery of comprehensive primary health care.

H. Incorporated nonprofit dental health centers.

I. Institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research or for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology or operating educational television or radio stations.

J. Schools.

K. Incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia.

L. Regularly organized churches or houses of religious worship.

M. Incorporated private nonprofit residential child caring institutions licensed by the Department of Health and Human Services as child caring institutions.

N. Incorporated nonprofit fire departments and incorporated nonprofit ambulance services.

O. Mental health facilities, mental retardation facilities or substance abuse facilities that are contractors under or receiving support under the Federal Community Mental Health Centers Act or its successors, or receiving support from the Department of Health and Human Services pursuant to Title 5, section 20005 or Title 34-B, section 3604, 5433 or 6204.

P. Regional planning commissions and councils of government established in accordance with Title 30-A.

Q. Incorporated nonprofit memorial foundations that primarily provide cultural programs free to the public, historical societies and museums.

R. Licensed, incorporated nonprofit nursery schools and day-care centers.

S. Any church affiliated nonprofit organization that operates, under a charter granted by the Legislature, a residential home for adults.

T. Incorporated nonprofit organizations providing temporary residential accommodations to pediatric patients suffering from critical illness or disease such as cancer or who are accident victims, to adult patients with cancer or to the families of the patients.

U. Incorporated nonprofit organizations providing temporary residential accommodations or food, or both, to hospital patients or to the families of hospital patients.

V. Incorporated nonprofit organizations that provide free temporary emergency shelter or food for underprivileged individuals in this State.

W. Incorporated, nonprofit child abuse and neglect councils as defined in Title 22, section 3872, subsection 1-A.

X. Statewide organizations that advocate for children and that are members of the Medicaid Advisory Committee.

Y. Community action agencies designated in accordance with Title 22, section 5324.

Z. Any nonprofit free public lending library that is funded in part or wholly by the State or any political subdivision or the federal government.

AA. Incorporated nonprofit Veterans' Memorial Cemetery Associations.

BB. Incorporated, nonprofit volunteer search and rescue organizations.

CC. Incorporated nonprofit hospice organizations that provide a program or care for the physical and emotional needs of terminally ill patients.

DD. Nonprofit youth organizations whose primary purpose is to provide athletic instruction in a nonresidential setting.

EE. Councils and local units of incorporated nonprofit national scouting organizations.

FF. Incorporated nonprofit educational organizations which are receiving, or have received, funding from the Department of Education, and which provide educational programs specifically designed for teaching young people how to make decisions about drugs, alcohol and interpersonal relationships at a residential camp setting.

GG. Local branches of incorporated international nonprofit charitable organizations which provide, on a loan basis and free of charge, medical supplies and equipment to persons.

HH. Incorporated nonprofit organizations whose sole purpose is to fulfill the wishes of children with life-threatening diseases when their family or guardian is unable to otherwise financially fulfill those wishes.

II. Incorporated nonprofit organizations engaged primarily in providing support systems for single-parent families for the development of psychological and economic self-sufficiency.

JJ. Local branches of incorporated nonprofit organizations whose purpose is to construct low-cost housing for low-income people.

KK. Incorporated, nonprofit organizations whose sole purpose is to create, maintain and update a registry of Vietnam veterans.

LL. Incorporated nonprofit organizations whose primary purposes are to promote public understanding of hearing impairment and to assist hearing-impaired persons through the dissemination of information about hearing impairment to the general public and referral to and coordination of community resources available to hearing-impaired persons.

MM. Credit unions that are organized under the laws of this State. This paragraph shall remain in effect only for the time that federally chartered credit unions are, by reason of federal law, exempt from payment of state sales tax.

NN. Nonprofit organizations whose primary purpose is to develop housing for low-income people.

OO. Nonprofit organizations whose primary purpose is to obtain, medically evaluate and distribute eyes for use in corneal transplantation, research and education.

PP. Centers for innovation as described in Title 5, section 13141.

**2. Exempt activities.** The exemptions provided by this section to a person based upon its charitable, nonprofit or other public purposes apply only to purchases intended to be used by the

person primarily in the activity identified by the particular exemption. Exemption certificates issued by the State Tax Assessor pursuant to this section must identify the exempt activity and must state that the certificate may be used by the holder only for purchases intended to be used by the holder primarily in the exempt activity. When an otherwise qualifying person is engaged in both exempt and nonexempt activities, an exemption certificate may be issued to the person only if the person has established to the satisfaction of the assessor that the applicant has adequate accounting controls to limit the use of the certificate to exempt purchases.

#### **§4853. Credit for worthless accounts**

The tax paid on sales represented by accounts charged off as worthless may be credited against the tax due on a subsequent return filed within 3 years of the charge-off. For purposes of this section, a worthless account means a “bad debt” as defined in Section 166 of the Code adjusted to exclude finance charges or interest, taxes charged on the sale price, and expenses incurred in attempting to collect the debt. A credit may be taken on the return filed for the period during which the account is written off as uncollectible in the claimant’s books and records and is eligible to be deducted for federal income tax purposes. If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

**Fiscal Impact Worksheet  
Estimated Annual Revenue Impact of Conformity  
to Streamlined Sales Tax**

	<b>Selected Options</b>	<b>Section Reference to Agreement</b>
1. Return due the 20th of the month - loss of use of the money for 5 days	(\$35,000)	318 Uniform Tax Returns
2. Remote sellers will begin to register and collect tax	\$0	
3. Monetary allowance to certified service providers - percentages not established		Monetary Allowances for New Article VI Technological Models
4. Prosthetic devices - EXPAND exemption to mobility enhancing equipment	(\$400,000)	definition of mobility 327 enhancing equipment
5. Definition of bad debts - nominal loss	\$0	Uniform Rules for Recovery of 320 Bad Debts
6. EXEMPT all delivery charges - loss on vendor delivery and handling charges	(\$4,800,000)	327 definition of delivery charges
7. Leases and rentals - tax the rental stream	(\$2,000,000)	327 definition of retail sale
8. EXEMPT all soft drinks	(\$10,900,000)	327 definition of soft drinks
9. EXEMPT bottled water and all ice	(\$1,400,000)	327 definition of food and food
10. EXEMPT all candy	(\$5,800,000)	327 definition of candy
11. EXEMPT Dietary supplements that are meal replacements	(\$700,000)	definition of dietary 327 supplements
12. EXEMPT sandwiches sold by a retailer, but prepared by third party	\$0	327 definition of prepared food
13. EXEMPT sales of single serve items where sales of prepared food > 75% total sales	\$0	327 definition of prepared food
14. EXEMPT all bakery items	(\$3,350,000)	327 definition of prepared food
15. EXEMPT all residential electricity	(\$2,600,000)	323 Caps and Thresholds
16. Industrial energy - impose .25% tax rate to maintain revenue neutrality	\$0	State and Local Tax Rates - 308 & 323 Caps and Thresholds
17. EXEMPT digital goods purchased in ME- use in multiple states - use tax paid for ME use	\$0	312 Multiple Points of Use
18. Sourcing rules - where sale occurs - destination based	\$0	Application of General 309 Sourcing Rules
19. EXEMPT nonresident intrastate telephone calls while in Maine	(\$50,000)	Telecommunication Sourcing 314 Rule
20. Teleflora sales - EXEMPT if delivery is in another state	\$0	Application of General 309 Sourcing Rules
21. Good faith of seller in making exempt sales	\$0	317 Administration of Exemptions
<b>Total</b>	<b>(\$32,035,000)</b>	
<b>Estimated administrative costs</b>	<b>\$470,000</b>	
<b>Net impact based on chosen options</b>	<b>(\$32,505,000)</b>	

