

- For Information
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BOARD OF GOVERNANCE
INFORMAL ISSUE PAPER

Streamlined Sales and Use Tax Agreement (SSUTA)

Proposal 13 – Motion to Amend the Library of Definitions, Appendix C, Part I, to Delete Subsection 6(F) From the Definition of Sales Price

I. Issue

Should the Board of Governance grant authority to its representative to vote on the motion to amend the SSUTA Library of Definitions, Appendix C, Part I, to delete subsection 6(F), as proposed by Mr. Stephen Kranz of Washington D. C.?

Should the Board of Governance vote to amend the definition of “sales price” to delete subsection 6(F)? Subsection 6(F) provides that the measure subject to sales tax includes “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.” (Exhibit 1 provides the language of Part I, Section 6, of the Library of Definitions, including the proposed revision. Exhibit 2 provides the motion.)

II. Staff Recommendation

Staff recommends the Board of Governance authorize its representative to vote on the motion to amend the SSUTA Library of Definitions, Appendix C, Part I, to delete subsection 6(F) from the definition of sales price.

Staff also recommends the Board of Governance vote “no” on the proposal to amend the Library of Definitions, Appendix C, Part I, to delete subsection 6(F).

III. Background

The definition of “sales price” and the nature of the costs and charges that are included in the measure of tax have been under discussion and consideration as part of the Streamlined Sales Tax Project (SSTP). Subsection 6(F) was added to the definition of “sales price” to provide for sales of products that include taxable and nontaxable components sold as a single product; i.e., bundled together. The SSTP believed most states included the “value” of a nontaxable tangible component when determining the taxable selling price of the combined tangible components sold as a single product. However, it was later determined that some state and business

Proposal 13

Amend Library of Definitions, Section 6

representatives had concerns with the language of subsection 6(F). State and business representatives are currently discussing and developing a uniform definition of “bundled transactions” that will be included in the SSUTA Library of Definitions, Appendix C, Part I, and will also address subsection 6(F).

IV. Summary

It appears the deletion of subsection 6(F) is necessary only if the proposed definition of a bundled transaction is approved (Proposal 14). Since the definition and tax treatment of bundled transactions and any potential refinement to the definition of sales price to reference or not reference bundled transactions are currently under consideration by the SSTEP, staff believes a decision to delete subsection (6)(F) would be premature.

For the reasons stated above, staff recommends a “no” vote on the proposed amendment.

Prepared by Lynda Cardwell, Sales and Use Tax Department
Current as of March 28, 2005

Appendix C, Library of Definitions

PART I

Administrative Definitions

Section 6: Sales Price

“Sales price” 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.

AMENDMENT # 13 – OFFERED BY STEPHEN KRANZ, WASHINGTON, D.C.

Motion

Motion to amend the Library of Definitions in Appendix C, Part I to delete subsection 6(F) from the definition of sales price.

Subsection 6(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;

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STREAMLINED SALES TAX PROJECT

Sales Price

SSTP Recommendations for Amendment to Agreement

November 17, 2004

Background

Appendix C Library of Definitions Part I Administrative Definitions of the Streamlined Sales and Use Tax Agreement provides for uniform core definitions for imposing and administering sales and use tax. The definition of sales price previously adopted in the agreement includes a provision for bundled taxable and non-taxable personal property. This subsection was adopted as a part of the agreement prior to the development of a definition of a bundled transaction. As a result of the continued work on uniform definitions, a definition of a bundled transaction for tangible personal property has been developed. To clarify and create uniform administration of bundled transactions for tangible personal property, the bundling provision in the definition of sales price should be deleted and incorporated in the rules developed for bundled transactions.

PART I

Sales Price Definition

"Sales price" 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. 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.

"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 the 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 states 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.

Discussion of Issue:

This subsection refers to taxable and non-taxable or exempt tangible personal property that have been "bundled together" and sold as a single product. The use of the phrase "bundled together" in this subsection is inconsistent with the current proposed definition of "bundled transaction."

- 1) The proposed definition for a bundled transaction provides for a *de minimis test* to deal with transactions where imposing tax on the single sales price, which is characteristic of a bundled transaction, seems overly harsh. The provision is as follows:

(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.
- 2) The proposed definition for a bundled transaction applies to "distinct and identifiable tangible personal property bundled together as apposed to the provision currently in the definition of sales price. Under the current definition of sales price, a state has the option of allowing the retail sale of a single product to be separately itemized into its component parts. This could result in the manipulation of product coding to the taxability matrix for uniformly defined products. This provision was originally intended to treat the retail sale of a product such as a gift basket as the sale of a single new product. To allow separate itemization of component parts of a single product is also inconsistent with the provision in "sales price" that provides "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" may not be deducted from the sales price.

Conforming States – 18 of 19 states contacted

Four states; Utah, Michigan, Wyoming and Kentucky did not adopt the "sales price" bundling language. Kentucky has other provisions for bundling in its statutes.

One state, Iowa, exercised the option of excluding from the sales price charges that are separately itemized for bundled personal property sold as a single product.