

- For Information
- For Discussion
- For Decision Making

BOARD OF GOVERNANCE  
**INFORMAL ISSUE PAPER**

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**Streamlined Sales and Use Tax Agreement (SSUTA)**

***Proposal 3 – Motion to Amend Section 309, Application of General Sourcing Rules and Exclusions From the Rule***

**I. Issues**

Should the Board of Governance grant authority to its representative to vote on the motion to amend SSUTA Section 309, as proposed by the State of Tennessee?

Should the Board of Governance vote to amend Section 309 to allow member states until December 31, 2006 to implement the sourcing rules and to establish sourcing rules for florists? (Exhibit 1 provides the language for Section 309, including the proposed revisions. Exhibit 2 provides the motion.)

**II. Staff Recommendation**

Staff recommends the Board of Governance authorize its representative to vote on the motion to amend SSUTA Section 309.

Staff also recommends the Board of Governance vote “yes” on the motion to amend Section 309 to allow member states flexibility in changing the effective date of their sourcing rules until after December 31, 2006.

**III. Background**

Among other things, SSUTA Section 309 requires that each member shall agree to require sellers to source the retail sale of a product in accordance with Section 310 using destination-based sourcing rules.

The change from origin-based to destination-based sourcing has been among the most contentious issues for states seeking to conform to the SSUTA. A major problem encountered by those states involves the ability of businesses to have software in place that will assist in tracking the delivery, collection and remittance of local taxes. After the SSUTA becomes effective and the Governing Board is created, the Governing Board will enter into contracts for certified service providers and will certify automated software systems that will assist in the

### **Proposal 3**

#### Amend Section 309

collection and remittance of these taxes. However, these systems will not be available to the states' in-state businesses that are asked to make this change prior to the creation and certification of the certified service providers and certified automated software systems.

#### **IV. Summary**

This amendment would permit member states flexibility in changing the effective date of its sourcing rules. States would have until December 31, 2006, to adopt the destination-sourcing rules. A state could still be deemed in substantial compliance with the SSUTA if it adopts a future effective date for the change from origin-based to destination-based sourcing. By December 31, 2006, certified service providers and certified automated software will be available to all businesses – whether in state or remote.

This amendment would provide more time for states to convert from origin-based to the destination-based sourcing rules. This amendment does not conflict with Proposal 8 submitted by the State of Ohio.

For the reasons stated above, staff recommends a “yes” vote on the proposed amendment.

Prepared by Larry Bergkamp, Sales and Use Tax Department  
Current as of March 28, 2005

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

- A. ~~After December 31, 2006, e~~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, 200~~5~~<sup>6</sup>, 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.

**Amendment # 3 – Offered by the State of Tennessee**

**Motion to Amend Section 309 of the Streamlined Sales and Use Tax Agreement:**

The change from origin to destination sourcing has been among the most contentious issues for states seeking to conform to the Streamlined Sales and Use Tax Agreement. A major problem encountered by those states involves the ability of businesses to have software in place that will assist in tracking the delivery, collection and remittance of local taxes. Among those businesses that have the greatest difficulty are businesses that use proprietary, industry-specific software such as lumber and building materials delivery. After the Agreement becomes effective and the Governing Board is created, the Governing Board will enter into contracts for certified service providers and will certify automated systems (software) that will assist in the collection and remittance of these taxes. Thus, these systems would be available to remote sellers who volunteer under the Agreement after the effective date, but would not be available to the states' in-state businesses who are asked to make this change prior to the creation and certification of certified service providers and certified automated systems.

This amendment would permit a state flexibility in changing the effective date of its sourcing rules until December 31, 2006. A state could still be deemed in substantial compliance if it adopted a future effective date for the change of sourcing rules and the Agreement could go into effect. By this date, CSPs and certified software would be available to all businesses - whether in-state or remote. Additional time would be provided to proprietary software vendors to incorporate the required collection and remittance features.

The proposed Amendment is as follows:

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

- A. After December 31, 2006, eEach 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, 200~~5~~6, 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.