

- For Information
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BOARD OF GOVERNANCE
INFORMAL ISSUE PAPER

Streamlined Sales and Use Tax Agreement (SSUTA)

Proposal 6 – Motion to Amend Section 317 (A)(5), Administration of Exemptions

I. Issue

Should the Board of Governance grant authority to its representative to vote on the motion to amend SSUTA Section 317 (A)(5), as proposed by Mr. Stephen Kranz of Washington D. C.?

Should the Board of Governance vote to amend Section 317 (A)(5) to add the word “not” in front of the word “may?” Adding the word “not” would prohibit states from requiring and issuing identification numbers to purchasers exempt from the payment of tax. (Exhibit 1 provides the language of Section 317, 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 317 (A)(5).

Staff also recommends the Board of Governance vote “no” on the motion to amend Section 317 (A)(5) to prohibit states from requiring and issuing identification numbers to exempt purchasers.

III. Background

Section 317 (A)(5) of the SSUTA currently allows a state to use a system in which a purchaser exempt from payment of tax is issued an identification number that is presented to the seller at the time of sale. California currently issues account numbers to registered taxpayers and fee payers that enable the account holder to purchase tangible personal property without the payment of tax; for example, a sale for resale. To purchase products without the payment of tax or tax reimbursement, the account holder issues an exemption certificate (e.g., resale certificate) to the seller which contains the required information to support the nontaxable purchase, including the holder’s account number. The proposed amendment to Section 317 (A)(5) would prohibit states from utilizing such a system.

Proposal 6

Amend Section 317 (A)(5)

California also issues identification numbers to qualified persons for purchases of certain products that qualify for an exemption from tax. For example, the Board of Equalization (Board) issues fuel exemption numbers (FEN) to qualified common carriers that do not hold California sellers permits. Holders of a fuel exemption number issued by the Board may purchase fuel and petroleum products without the payment of all or a portion of the sales or use tax due on their purchase of fuel and petroleum products when certain conditions are met.

An amendment to SSTUA Section 317 (A)(5) would appear to prohibit California's current system of issuing account numbers to registered taxpayers and fee payers or exemption numbers to qualified purchasers. It would also appear to prohibit California from requiring that purchasers provide the seller with their account number or exemption number in order to purchase products without the payment of tax.

IV. Summary

The proposed amendment is not consistent with California's current laws and policies. The proposed amendment would prohibit states from requiring or issuing state-specific identification numbers to registered taxpayers and fee payers that are exempt from the payment of sales or use tax due to the nature of their business or purchases. Instead of requiring purchasers to register and obtain state-specific account numbers, purchasers would be permitted to issue, and states would be required to accept, other purchaser-specific identifiers as acceptable support to exempt the sellers' sales of products from the sales or use tax. For example, the purchaser would be permitted to provide their United States federal ID number or their state-issued drivers license number in place of an account number on an exemption certificate.

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

Section 317: ADMINISTRATION OF EXEMPTIONS

- A. Each member state shall observe the following provisions when a purchaser claims an exemption:
1. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
 2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
 3. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
 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 not 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.
- B. Each member state shall relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.

AMENDMENT # 6 – OFFERED BY STEPHEN KRANZ, WASHINGTON, D.C.

Motion to amend Section 317 (A)(5) to add the word “not” in front of the word “may” so that the section reads:

A member state may not 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.