

- 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 8 – Motion to Add Section 330, Transition Period***

**I. Issues**

Should the Board of Governance grant authority to its representative to vote on the motion to amend SSUTA to add Section 330, as proposed by the State of Ohio?

Should the Board of Governance vote to add Section 330 to allow member states that switch from origin-based sourcing to destination-based sourcing the option to provide a transition period of up to three years for smaller retailers when reporting local government sales and use taxes? (Exhibit 1 provides the motion, including the proposed language for Section 330.)

**II. Staff Recommendation**

Staff recommends the Board of Governance authorize its representative to vote on the motion to add SSUTA Section 330.

Staff also recommends the Board of Governance vote “yes” on the motion to add Section 330 to allow member states flexibility in changing from origin-based sourcing to destination-based sourcing.

**III. Background**

Among other things, Section 309 requires that each member state 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 collection and remittance of these taxes. However, these systems will not be available to the states’ in-state

**Proposal 8**  
Add Section 330

businesses that are asked to make this change prior to the creation and certification of the certified service providers and certified automated software systems.

This amendment would allow a three and a half-year voluntary transition plan for small businesses to conform to the new destination-based sourcing rules for sales subject to local sales and use taxes. The number of businesses that qualify would be reduced each year based on the established thresholds and would apply to both in-state and out-of-state businesses. Under the transition plan, such relief would be provided to sellers having qualifying sales not exceeding \$2,000,000 in the first year, not exceeding \$1,000,000 in the second year, and not exceeding \$500,000 in the third year. The option to avail themselves of the transition period would be left to the discretion of the qualifying small businesses. This proposal would provide an incentive for some of the smaller business retailers to sign onto the SSUTA.

**IV. Summary**

This amendment would permit member states and retailers who may not have the resources to implement the provisions of the SSUTA within the current time constraints, flexibility in changing from origin-based sourcing to destination-based sourcing. 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.

Note that this amendment does not conflict with Proposal 3 offered by the State of Tennessee.

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 30, 2005

**Amendment #8 – Offered by William Wilkins of the State Ohio**

**Motion to add Section 330 to the Streamlined Sales and Use Tax Agreement to read as follows:**

**Section 330: TRANSITION PERIOD**

- (A) To address both technological issues and concerns with small businesses being able to comply with Section 310, notwithstanding that Section, a state may by law, rule or administrative practice relieve sellers from the destination sourcing requirements, for tangible personal property and/or services, that apply to taxes collected for localities, but not the state tax rate. States may provide such relief only to sellers that in immediate preceding calendar year had taxable sales that were not subject to sourcing under Section 310, subsection (A)(1), excluding any taxable sales sourced to the same taxing jurisdiction of the place of sale, that did not exceed the following:
- (1) For calendar year 2005 and 2006, \$2,000,000.
  - (2) For calendar year 2007, \$1,000,000.
  - (3) For calendar year 2008, \$500,000.
  - (4) In any calendar year a seller exceeds the threshold in subsections (A)(1) to (3); such seller shall no longer be eligible to use this Section.
- (B) A state must apply these provisions to both in-state and out-of-state sellers, but a state may require a seller making sales from a location in that state to collect any taxes imposed under state law in the locality where the seller is located if the sale was made at that seller's location in the state.
- (C) (1) "Seller" as used in this section includes for purposes of ascertaining taxable sales any affiliated entities. An "affiliated entity" is an entity that directly or indirectly is related with one or more entities related in such a way that one entity owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty percent of the other corporation's common stock with voting rights.
- (2) "Taxable sales" as used in this section includes all sales on which sales or use tax would be due to a state, whether or not the seller has nexus to be required to remit the tax to the state.
- (D)(1) A successor to a business that does not have twelve months of sales in the prior calendar year is subject to this Section based on the prior owner's taxable sales.
- (2) A new business not subject to subsection (D) (1) may use this section based on the seller's total taxable sales in the prior calendar year, if any.

- (E) This section does not apply to any seller using a service provider or automated system certified under Section 501 or to sale sourced under Section 310 to another state.
  
- (F) Irrespective of the time limitations in subsection (A), a state with a membership effective as determined by Section 804 prior to January 1, 2011 may use this Section by replacing “calendar 2005 and 2006” with “the first calendar year the membership is effective” in subsection (A) (1); replacing “calendar year 2007” with “the second calendar year after the membership is effective” in subsection (A) (2); and replacing “calendar year 2008” with “the third calendar year after the membership is effective” in subsection (A) (3).