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STREAMLINED SALES TAX PROJECT SSUT AGREEMENT SECTION ANALYSIS

STATE OF CALIFORNIA BOARD OF GOVERNANCE

Section: 313 (Exhibit I provides the language of Section 313 of the Streamlined Sales and Use Tax Agreement (SSUTA))

Title: Direct Mail Sourcing

Summary

SSUTA Section 313 provides rules for sourcing sales of printed materials that meet the definition of “direct mail” as defined by the SSUTA Library of Definitions (Exhibit II provides the SSUTA definition of direct mail). These rules apply in place of the general sourcing rules of SSUTA Section 310, subsection (A) and result in the sale of the direct mail being apportioned and sourced to the jurisdiction(s) where the recipients receive the direct mail when the requirements of SSUTA Section 313 are met (Exhibit III provides the language of SSUTA Section 310, subsection (A)).

Conforming to SSUTA Section 313 will require California to amend some of the Revenue and Taxation Code sections (Sections) and Code of Regulations, Title 18 sections (Regulations) identified in this analysis. Although the change will generally not reduce the amount of taxes due, it will result in revenue shifts for local and district taxing jurisdictions. However, the revenue impact has not yet been determined. A revenue estimate will be completed to quantify the impact.

Description

The sourcing rules of SSUTA Section 313 are an exception to the general sourcing rules of SSUTA Section 310. Purchasers of direct mail shall provide the seller with a direct pay permit or direct mail form (an exemption certificate claiming a direct mail exemption), which shifts the obligation for reporting and sourcing the sale to the purchaser. When a direct pay permit or direct mail form is not provided, the purchaser shall provide the seller delivery information to show the jurisdictions where the recipients will receive the direct mail. If the purchaser does not hold a direct pay permit and does not provide the seller a direct mail form or delivery information, the seller is required to source the sale to the jurisdiction from where the direct mail is shipped, as provided by SSUTA Section 310(A)(5).

Upon receipt of a direct pay permit or direct mail form from the purchaser of the direct mail, and in the absence of bad faith, the seller is relieved of all obligations to pay or collect the taxes due on the transaction. Instead, the purchaser is required to report and remit the taxes due on a direct pay basis. The purchaser is

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also required to apportion and source the sale or use to jurisdiction(s) where the recipients will receive the direct mail.

Related SSUTA Sections

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

Section 310: General Sourcing Rules

Section 312: Multiple Points of Use

Section 316: Enactment of Exemptions

Section 326: Direct Pay Permit

Appendix C: Library of Definitions, Part I, Administrative Definitions, Direct Mail

Related California Sections and Regulations

Section 6379.5	Printed sales messages for goods and services printed to the special order of the purchaser
Section 6379.8	Mailing lists
Section 7205	Place of sale
Section 7263	Place of sale
Regulation 1504	Mailing Lists and Services
Regulation 1540	Advertising Agencies and Commercial Artists
Regulation 1541	Printing and Related Arts
Regulation 1541.5	Printed Sales Messages
Regulation 1684	Collection of Use Tax by Retailers
Regulation 1685	Payment of Tax by Purchasers
Regulation 1699.5	Direct Payment Permits
Regulation 1699.6	Use Tax Direct Payment Permits
Regulation 1703	Interest and Penalties
Regulation 1802	Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes
Regulation 1822	Place of Sale for Purposes of Transactions (Sales) Tax and Use Taxes
Regulation 1827	Collection of Use Tax by Retailers

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Evaluation

Under California's current rules, the place where the sale or use of tangible personal property is deemed to occur determines the allocation/sourcing of the transaction. Taxable sales and purchases of direct mail would generally be sourced in the same manner as other taxable sales of tangible personal property.

For state sales and use taxes, the place of sale or use of the direct mail is generally the place where the property is physically located at the time the act constituting the sale or use takes place. For local sales tax, the place of sale is generally the local jurisdiction of the retailer's place of business. Local use tax is generally reported to the local jurisdiction where the property is first functionally used. Since use tax is generally not identified with a specific registered place of business in this state, the tax is usually allocated to the local jurisdiction in the county of first functional use through a countywide pool.

The place of sale for district sales taxes is generally the place of business of the retailer and taxable sales are generally sourced to the jurisdiction where the retailer is located. The district use tax is generally reported to the jurisdiction where the property is first functionally used.

Under the SSUTA, the sourcing rules determine the place of sale of tangible personal property sold or purchased for use in California. The SSUTA adopts a destination-based sourcing method where the location the consumer takes delivery of the goods or service is generally the place of sale. Except for certain types of transactions, the general sourcing rules of SSUTA Section 310 govern which jurisdiction is entitled to the local and district taxes generated from a particular transaction.

An exception to the general sourcing rules is provided under SSUTA Section 313. When the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form claiming a direct mail exemption or delivery information, the seller is generally required to source the sale to the jurisdiction from where the direct mail is shipped to the purchaser or the recipients. If the purchaser provides delivery information, the seller is required to apportion and source the sale to the jurisdiction(s) where the recipients will receive the direct mail.

When a purchaser of direct mail provides a direct mail form or a direct pay permit, the purchaser is required to report and remit the taxes due on a direct pay basis. The purchaser is also required to apportion and source the sale or use to the jurisdiction(s) where the recipients will receive the direct mail.

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Impact

Conforming to SSUTA Section 313 will result in revenue shifts for both local and district taxing jurisdictions. The magnitude of these revenue shifts and the identity of the effected jurisdictions are yet to be determined. Conforming to SSUTA Section 313 will also impact the reporting and sourcing requirements for direct mail retailers and purchasers in California.

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.

“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.

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).