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FINANCE AND ADMINISTRATION CABINET
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June 10, 2005

Mr. Stephen P.B. Kranz, Tax Counsel
Council on State Taxation
122 C Street, N.W., Suite 300
Washington, DC 20001-2109

The Honorable Angela Monson
Oklahoma State Senate
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105

Commissioner R. Bruce Johnson
Utah Tax Commission
210 N. 1950 West
Salt Lake City, UT 84134

RE: Public Comment on Kentucky's Petition for Membership in the Streamlined Sales and Use Tax Agreement (SSUTA).

Dear Mr. Kranz, Senator Monson, and Commissioner Johnson:

The Commonwealth of Kentucky petitioned for membership in the SSUTA on March 28, 2005. On May 25, 2005, we received comments on our petition from Mr. Stephen Kranz. The following information is offered in response to the concerns regarding Kentucky's administrative and legislative actions taken to move into compliance with the terms of the SSUTA.

The Business Advisory Council (BAC) has expressed general concern that states may be relying on the promulgation of various regulations without the accompanying statutory authority to achieve compliance with the Agreement. This concern does not apply to Kentucky because the changes to the sales tax code and related administrative practices are authorized under the following statutory provisions: KY Acts 2001, ch. 6, KY Acts 2003, ch. 124, and HB 495 (2005 KY General Assembly). Furthermore, Kentucky anticipates the posting of its taxability matrix before the end of June.

Another general concern relates to states' participation in the SSUTA central registration system by October 1, 2005. Kentucky is participating with other states in the development of a combined registration system. Our state is making the necessary changes to internal processing to ensure Kentucky's full participation when the combined system becomes operational.

Specific Concerns

1. How does Kentucky's adoption of the definition of "durable medical equipment" and its exemption for hospital beds purchased for non-commercial private use comply with the Streamlined Agreement requirements for use of the Library of Definitions?

HB 495, adopted by the 2005 KY General Assembly, maintains the state's long-held exemption for hospital beds by creating a use-based exemption for this product limited to private, non-commercial use. This wording was adopted after the business community raised concerns about the previous "purchased by an individual for private use" language in the law. The exact use-based wording was selected based upon recommendations from fellow Implementing States and in conformity with the Section 214 of the Agreement.

The legislation also adopted the Agreement definition of "mobility enhancing equipment" to continue the exemption of certain medical items such as crutches, walkers, wheelchairs, etc that were previously itemized in the law. This provision represents a slight expansion of the exemption to include all mobility enhancing equipment for which a prescription is issued. The adoption of the definition of "durable medical equipment" helps to clarify the difference between the various medical product terms. However, Kentucky does not provide an exemption for all products within the durable medical equipment category. Kentucky exercised its option to enact a use-based exemption for an undefined item (hospital beds) that is included within a defined product (durable medical equipment) according to the provisions of Section 316 of the Agreement. The final form of the Agreement adopted by the Implementing States clearly allows the interplay of use-based and entity-based exemptions with the Library of Definitions (Section 327).

The position adopted by some members of the healthcare industry that the specific exemption toggles provided in the product definitions themselves are the only exceptions for how to treat an item within a defined product is not supported by the Agreement language. This specific restriction was deleted from a preliminary Agreement draft during formulation of the final Agreement language ultimately adopted by member states in November 2002 (see page 16 of Philadelphia September 12-13, 2002, Implementing States minutes).

Kentucky continues to work with various industries affected by Streamlined legislation to ensure ease of administration. The hospital bed exemption language in HB 495 preserves a long-standing exemption that primarily affects in-state retailers.

2. Will Kentucky comply with the rounding rule as provided in Section 324 of the Agreement?

Yes, the state has adopted the rounding provision with the computation carried to the third decimal. Paragraph B of the section seems to apply primarily to jurisdictions with state and local sales and use taxes and the application of tax in the aggregate. Kentucky does not have local option sales taxes.

3. Will Kentucky allow a seller to allocate delivery charges on an invoice to both exempt and taxable property?

The Streamlined Agreement sets forth two ways a seller may allocate delivery charges to both exempt and taxable property on the same invoice under the definition of "delivery charges." If sellers follow these guidelines to break out delivery charges attributed to exempt property, Kentucky will honor this distinction. However, if the seller does not break out these charges on the invoice to the customer that includes taxable property, the entire delivery charge is taxable.

4. Will Kentucky honor the confidentiality and privacy provisions of Section 321 of the Agreement?
Yes, Kentucky Revised Statute (KRS) 139.785 authorizes the Department to participate and comply with the provisions of the Agreement. Furthermore, KRS 131.190 sets forth specific confidentiality provisions that more than meet the standards of the Agreement itself.

5. Will Kentucky honor the amnesty requirements of Section 402?

Yes, Section 4 of HB 495 created a new section of KRS 139 to clarify that Kentucky will follow the SSUTA provisions for sellers registering within the first 12-months of activation to be exempt from any liabilities for periods prior to registration, provided that Agreement requirements are met.

6. Does Kentucky's definition of tangible personal property (TPP) comply with the terms of the Agreement?

Yes, Kentucky's definition of TPP agrees in substance with the Agreement definition. Kentucky's taxation of TPP regardless of the method of delivery conforms with the practice of many other Implementing and Petitioning States as well. It is understood further amendments to the definition will be required once the Project officially adopts a definition of "digital property."

7. Does Kentucky comply with the lease sourcing provisions of the Agreement?

Yes, Kentucky complies with the sourcing provisions of the Agreement by current administrative practice. To further support these actions, the Department is currently in the process of promulgating an emergency regulation to clarify these provisions.

In summary, Kentucky believes that it has met all the substantive requirements of the Streamlined Sales and Use Tax Agreement. If you should have any further questions or require additional information regarding Kentucky's compliance with the Agreement, please do not hesitate to contact the undersigned.

Sincerely,

Richard Dobson

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C: Scott Peterson, Interim Director, Conforming States
Commissioner Loren L. Chumley, Conforming States Committee Co-Chair
Senator Dwight Cook, Conforming States Committee Co-Chair