

COMPLIANCE WEEK

Sales Tax Initiative An Opportunity To Review Systems

By Paul J. Martinek — October 11, 2005

A new initiative to streamline the collection of sales and use taxes provides an incentive for companies to review their tax-collection systems, and to consider whether they should take advantage of amnesty provisions being offered by participating states as of Oct 1.

The Streamlined Sales and Use Tax Agreement is a set of guidelines to which participating states must conform their sales tax rules and regulations in order to become a full member of the Streamlined Sales Tax Project.

One of the primary motivations of the project is to improve revenue collections through better compliance—particularly for online retailers and other “remote sellers” that don’t have a physical presence in the state.



Richard Nielsen, of counsel with Pillsbury Winthrop Shaw Pittman in San Francisco, notes that one of the reasons that many companies do not voluntarily register to collect taxes in states where they don’t have a physical presence is that “it’s a compliance nightmare,” due to differing rules governing sales and use taxes.

Nielsen

Legislatures in the states that have agreed to the SSUTA “have adopted common provisions and definitions of terms that go under the sales and use tax provisions of their respective laws,” says Nielsen. “The ultimate goal is to try to lure remote sellers to voluntarily join because of the purportedly easier compliance functions, since those state members will have some uniformity.”

Even companies that are already registered to pay taxes in the 19 states that have signed on to the SSUTA need to be aware that the sales and use tax laws have been tinkered with in those jurisdictions, Nielsen observes. “Companies are certainly going to have to revisit whatever systems they have in place that indicate where and when taxes should be accruing,” he says. “Since the rate and point of sale is going to change for some [transactions], they’re going to have to go back and revisit their systems to make sure they’re changed.”

Centralized Registration System

The 13 states that are full members of the SSTP offer amnesty for uncollected or unpaid sales and use taxes for companies that register. Those states are: Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Dakota and West Virginia.

Another six states—Arkansas, Nevada, Ohio, Texas, Utah and Wyoming—have adopted the provisions of the SSUTA and are expected to be full members, agreeing to the amnesty provisions, in the next few years.

Companies that volunteer to collect sales tax on remote sales can either register directly with each member state or through a centralized registration system. However, experts say that companies registering through the centralized system must be aware that, by doing so, they are agreeing to collect and remit tax for sales made into all 13 members states—even if the company doesn't have a sufficient legal nexus with one or more of the states to make them legally obligated to collect taxes.

Registration through the centralized system is required in order to be eligible to get amnesty for uncollected or unpaid sales and use tax (as well as any penalties or interest that might apply). Amnesty does not apply to matters for which the company has received notice of the commencement of an audit.



Although companies that are out of compliance are a target of the amnesty offer, they are not the only ones that should be aware of the SSTP, notes Dick Eppleman, director of government markets for tax-technology provider Vertex. “While the vast majority of companies are not registered [in a state] because they don’t believe they have a duty to collect, they may discover [at some point] that they may have nexus in the state and they do have a duty to collect—that the state just hasn’t realized it yet,” says Eppleman. “These companies now have an opportunity to come forward and be granted amnesty from any past tax or penalty.”

Eppleman notes that the amnesty carrot may be of interest to companies that have up until now segregated Internet operations. “Some companies have said, ‘Our online business is separate from our brick-and-mortar business.’ This may be an opportunity to say, ‘We are the same company’—to get it out on the table and go forward,” according to Eppleman.

Nielsen, of Pillsbury Winthrop, notes that many larger states, like New York and California, have not jumped aboard the SSTP initiative. “The goal is to get the big states, but the bigger states with their own particular provisions [may be] reluctant to join,” he says.

And, although uniformity of tax laws may make it easier for some remote sellers to comply, that still may not be enough incentive to get many companies to voluntarily agree to collect taxes, according to Nielsen. “What’s lacking for a lot of remote sellers is they’re not obligated to collect or report because they have no nexus [to the state],” he says.

There are also some unresolved questions about the amnesty offer that companies need to consider before they jump in and accept it, according to Nielsen. “One of the issues is, when a company comes forward and partakes in one of the [participating] states, what does it possibly do [with respect to] states that are not participating?” says Nielsen.

Eppleman agrees that the amnesty offer alone may not be enough to entice companies that clearly have no duty to collect taxes. “But for someone who discovers that they may have a duty to collect, this is an opportunity to get it right and not be penalized for coming forward,” he says.

The following excerpt is from the Streamlined Sales Tax Project, Executive Summary:

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project’s proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection. The Project’s proposals are focused on improving sales and use tax administration systems for both Main Street and remote sellers for all types of commerce...

The goal of the Streamlined Sales Tax Project is to provide states with a Streamlined Sales Tax System that includes the following key features:

- **Uniform definitions within tax laws.** Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the Project’s definitions, a certain amount of impact on state revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through common definitions.
- **Rate simplification.** States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or taxable services at another rate. State and local governments will accept responsibility for notice of rate and boundary changes at restricted times. States will provide an on-line rate/jurisdiction database to simplify rate determinations.
- **State level tax administration of all state and local sales and use taxes.** Businesses will no longer file tax returns with each local government within which it conducts business in a state. Each state will provide a central point of administration for all state and local sales and use taxes and the distribution of the local taxes to the local governments. A state and its local governments will use common tax bases.
- **More...** Refer to the SSTP Web site for details.