Report of the

Alabama Streamlined Sales and Use Tax Commission

Amendments to *Code of Alabama 1975*

For Compliance with

Streamlined Sales and Use Tax Agreement

August 3, 2012

The Alabama Streamlined Sales and Use Tax Commission was created as a result of Act 2011-563. The Act directed the commission to identify and develop the programs necessary for the state to become compliant with the Streamlined Sales and Use Tax Agreement (SSUTA or the Agreement) in the event that federal legislation implementing the agreement or the general concepts of the agreement becomes law. The Commission carried out its tasks and made its recommendations under the assumption that the general concepts of the Streamlined Sales and Use Tax Agreement would become federal law. In the event that federal legislation is adopted, which offers an alternate path to the Agreement for remote sellers to collect and remit sales and use taxes, or which does not include the general concepts of the Agreement, then the conclusions and recommendations contained in the Commission's reports would not be valid, and the Commission would need to consider the enacted federal legislation and determine if there is a need to rewrite its conclusions and recommendations accordingly.

The Commission was directed to submit an initial report of its recommendations for implementation and administrative supervision of the system to the Legislature no later than the fifth legislative day of the 2012 Regular Session. The required initial Report of Streamlined Sales and Use Tax Commission was submitted to the Legislature on February 15, 2012.

Section 5 of the Act further directed the commission to identify the changes to existing law that would be necessary in order to bring Alabama into compliance with the Agreement. To that end, this report identifies (1) requirements of the Agreement for which there are no current provisions in the Code of Alabama, and (2) provisions in the Alabama Code that conflict with the Agreement. Additional comments are included as notes.

The Streamlined Sales and Use Tax Agreement states that its purpose is to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance. While the Agreement indicates its intention to preserve to the extent possible the taxing authority of the states, member states must comply with the requirements of the Agreement. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

A. A single point of administration of sales and use tax collections.

B. Uniformity in the state and local tax bases.

C. Uniformity of major tax base definitions.

D. Central, electronic registration system for all member states.

E. Simplification of state and local tax rates.

F. Uniform sourcing rules for all taxable transactions.

G. Simplified administration of exemptions.

H. Simplified tax returns.

I. Simplification of tax remittances.

J. Protection of consumer privacy.

While the Commission recommended the Department of Revenue to be the single point of administration for all Alabama sales and use taxes, it also recommended involvement of the local tax officials with the Department in the single administration of all the taxes (state, county and municipal), to the extent such involvement would not violate the Agreement. The recommended involvement would include a State and Local Advisory Council to ensure that counties and municipalities would have meaningful input into the development, implementation and management of the state-level process. The Commission also recommended that local governments would maintain the ability to audit taxpayers and provide enforcement (for all applicable state, county and municipal taxes) in coordination with the Department.

REQUIRED STATUTORY CHANGES

The Code of Alabama would need to be amended to incorporate the simplifications and uniform administrative procedures required, which include state-level administration of state and local taxes, adoption of the definitions in the Library of Definitions of the Agreement, common base for state and local taxes, simplified state and local tax rates, timely notification of state and local tax rate changes, maintenance of local rates and boundary databases; conforming provisions for seller registration, notification of rates changes, sourcing rules, administration of exemptions, simplified tax returns, simplified tax remittances, recovery of tax paid on bad debt, rounding method, direct pay authority, refund procedures; provisions for taxability matrix, seller's amnesty, and taxpayer confidentiality.

PROVISIONS OF THE AGREEMENT THAT ARE IN CONFLICT WITH THE CODE:

DEFINITIONS: If a term defined in the Agreement's "Library of Definitions" appears in the member state's sales and use tax statutes or administrative rules, the state must utilize the definition of the term

in the Library of Definitions. (SSUTA, Section 327). The following terms have conflicting definitions between state law and the Agreement or they are not currently addressed, and require amendment; Person, Sale or Sales, Gross Proceeds of Sales, Gross Receipts, Wholesale Sale(1), Retail Sale, Storage, Use, Sales Price(2), Prepaid Telephone Calling Cards, Prepaid Calling Service, Prepaid Wireless Calling Service, Tangible Personal Property, Delivery Charges, Direct Mail, Bundled Transactions, Computer, Delivered Electronically, Electronic, Load and Leave, Prewritten Computer Software, Computer Software Maintenance Contract, Alcoholic Beverages, Dietary Supplement, Food and Food Ingredients, Tobacco, Drug, Durable Medical Equipment(3), Mobility Enhancing Equipment, Over-The-Counter-Drug, Prescription, Prosthetic Device, Leasing or Rental, Private Auditing or Collecting Firm(4), Self-administered County or Municipality(4)

(1) Note: The terms wholesale sales and retail sales of tangible personal (TPP) property should be all inclusive and mutually exclusive terms for all sales of TPP. The term Wholesale Sale should mean only sales for resale. Items listed in the definition of wholesale sale that are not for resale may be included as exemptions.

(2) Note: States may elect to include or exclude from "Sales Price" certain separately stated charges, including delivery charges. The term delivery charge includes transportation, shipping, postage, handling, crating and packing charges for preparation and delivery to a location designated by the purchaser. The term includes charges for delivery in the seller's vehicle and charges for delivery by common carrier or U. S. Postal Service. Currently charges for delivery by a seller are taxable but charges for delivery to the customer by common carrier or U.S. Postal Service are not taxable.

(3) Note: The tax exemption contained in the definition of durable medical equipment may be included as exemptions.

(4) Note: The definitions of private auditing or collecting firm and self-administered county or municipality conflict with the requirement of state level administration of state and local sales and use taxes.

TAX RATES. Under the Agreement, a member state cannot have multiple state sales and use tax rates, with certain exceptions. The following tax rate differences conflict with the Agreement:

A. The automotive tax rate that is applied to mobile home set-up materials.

B. The reduced rate of tax on sales of manufacturing machines and replacement parts. (5)

C. The reduced rate of tax on sales of farm machinery and equipment (5)

(5) Note: While there cannot be a reduced rate of sales and use tax for manufacturing machines and farm machinery and equipment, there are various options for the tax treatment of these items, such as:

(a) Tax these items at the general rate of sales and use tax

(b) Provide a lower rate of sales and use tax on all retail sales.

(c) Exempt these items from sales and use tax.

(d) Impose a new excise tax at a reduced rate. This would require a new chapter to be added to the Code, including amendment to the exemption statutes, abatement statutes, local tax statutes, etc.

LOCAL TAX RATES. The following local tax rate issues must be addressed:

A. Local jurisdictions that levy a sales or use tax may not have more than one local sales tax rate or more than one local use tax rate per local jurisdiction.

B. Local jurisdiction that levy both a sales tax and use tax must have identical rates for both taxes.

C. A county or municipality may not impose a gross receipts tax in the nature of a sales tax as defined in Section 40-2A-3, paragraph (8).

LEVY TAX ON PRODUCTS TRANSFERRED ELECTRONICALLY. A member state cannot include products transferred electronically in the definition of tangible personal property. To impose tax on these items, the Code must specifically levy tax on digital products delivered electronically.

Prepaid calling service, prepaid wireless calling service, and bundled transactions must be specifically taxed, or they become exempt.

IDENTICAL STATE AND LOCAL TAX BASES. Generally, the tax base for local jurisdictions shall be identical to the state tax base. The following must be changed:

A. A general provision must be included that product based, entity based, or use based exemptions from state sales and use taxes apply to all local taxes.

B. The provisions allowing localities to “opt-In” for a sales tax holiday must be eliminated and the exemptions provided during a tax holiday must automatically apply to state and local sales and use taxes. The Code must be amended either to repeal the holidays (back-to-school holiday and severe weather preparedness holiday) or to provide for automatic exemption of all county and municipal sales and use taxes during the holiday periods.

C. The exemption of religious magazines from use tax is not contained in the sales tax, but the Agreement requires uniform sales and use tax bases.

D. The statutes that provide exemptions for local sales and use taxes when there are not corresponding state tax exemptions must be repealed, or the exemptions must be extended to the state taxes; in order to keep the state and local tax bases consistent.

E. The exemptions of authorities, districts, boards and other similar statutory entities must be addressed.

OTHER PROVISIONS OF THE AGREEMENT THAT MUST BE ADDRESSED:

A. The threshold for filing estimated payments of sales tax must be increased from an average monthly tax amount of $1,000 to $30,000.

B. A requirement must be added for sellers to make estimated payments of use tax if the prior year's monthly average tax was $30,000 or more.

C. A uniform discount must be provided for timely payment of sales and use taxes. Currently there is no discount for payment of use taxes.

D. The wording regarding calculation of tax by tax brackets must be deleted, and the rounding rule of SSUTA must be adopted.

E. The phrase "prepaid calling service, prepaid wireless calling service, and digital products delivered electronically" must be added to appropriate sections of the Code referencing "sales of tangible personal property." For example:

(1) Section 40-23-4(a)(11) exempts from sales tax "The gross proceeds of sales of tangible personal property to the State of Alabama, to the counties within the state and to incorporated municipalities of the State of Alabama." The exemption should include sales of prepaid calling service, prepaid wireless calling service, and digital products delivered electronically.

(2) Section 20-23-68(b) reads, "Every seller or person engaged in making retail sales of tangible personal property for storage, use or other consumption in this state … shall be subject to all the provisions of this chapter …" This section should also pertain to sellers of ""prepaid calling service, prepaid wireless calling service, and digital products delivered electronically."

F. Provide that every seller who is required to collect and remit the state sales or use tax shall also be required to collect and remit the appropriate local tax.

AMENDMENTS FOR ADMINISTRATION OF LOCAL TAXES:

Provisions must be made in state law to address conflicting administrative provisions in various local acts, for example:

A. To provide for state level administration of local sales and use taxes. The Agreement does not require state level administration of local taxes other than sales and use taxes.

B. To provide for notification of rate changes within the times required by the Agreement. Rate changes must occur on the first day of a calendar quarter after a minimum of 60 days' notice to the sellers, 120 days' notice for sales made by sellers through printed catalogs when the local tax rates are published in the catalog. Therefore the local jurisdictions must provide notification of the rate change to the state level administrator at least 90 days prior to the effective date of the rate change and 150 days prior for sales made when the local rates are published in a catalog. This will allow the state-level administrator time to generate the required notices to sellers.

C. For sales and use tax purposes only, local jurisdictional boundary changes must be effective on the first day of a calendar quarter after a minimum of 60 days' notice to sellers.

D. A database must be created and maintained of all sales and use tax rates for all of the local jurisdictions on a zip code or address basis. Annual appropriations must be made to the Department in the State's budgetary process to offset these costs.

SUBMISSION AND COMMENTS

This preliminary report is submitted to the Department of Revenue, all Alabama counties and municipalities, the Business Council of Alabama, and the Alabama Retail Association. The report was also posted on the web sites of the Department of Revenue, the Association of County Commissions of Alabama, and the Alabama League of Municipalities.

Within 45 days of the date of this report comments may be emailed to:
alsstcommission@googlegroups.com

Written comments may be submitted to:

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The members below hereby submit this report on this the 3rd day of August, 2012:

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