

Streamlined Sales Tax Governing Board, Inc.

The Streamlined Sales Tax Governing Board

The effort that resulted in the formation of the Streamlined Sales Tax Governing Board began in March 2000. The goal of this effort was to find solutions for the complexities in state and local sales tax systems that resulted in the U.S. Supreme Court holding in *National Bellas Hess v. Illinois* and *Quill Corp. v. North Dakota* that a state may not require a seller that does not have a physical presence in the state to collect tax on sales into that state. The Court ruled that the existing state sales tax systems were too complicated to impose on businesses that did not have a physical presence in those states. The Court said Congress has the authority to allow states to require remote sellers to collect tax.

As a result, the Streamlined Sales and Use Tax Agreement was developed through a cooperative effort of the states and business community members. The purpose of the Agreement is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance. 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. State level 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.

To date, twenty-four states have adopted the simplification measures in the Agreement (representing over 35 percent of the population) and more states are moving toward adopting the simplification and uniformity measures. In addition, as of May 1, 2019, over 6,200 active sellers have voluntarily registered and are collecting the appropriate tax for all of the member states. Since Streamlined became effective in 2005, those sellers have collected nearly \$4 billion in sales tax that may have otherwise gone unpaid.

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EXAMPLES OF SALES TAX LAWS AND RULES BEFORE AND AFTER STREAMLINED

Issue	Former System	Streamlined System
Registering to Collect A State's Sales Tax	Sellers had to register individually with each state.	Sellers can register in all Streamlined states by completing a single registration.
Filing Returns and Paying the Tax Collected	Each state uses unique tax forms and processes. In some states localities have their own tax forms.	Single uniform electronic tax return to report both state and local taxes. Single uniform electronic process for submitting all state and local tax payments.
State and Local Tax Rates	Unlimited number of tax rates that change anytime with little notice.	Each state allowed one rate (optional rate for food and drugs). Each locality allowed one rate that can be changed only on the first day of a calendar quarter after 60 days notice.
Informing Retailers of Jurisdiction Rates and Boundaries	Merchant must know which addresses are inside and outside localities and pay penalty and interest when wrong.	States must provide information on local rates and boundaries and must relieve the retailer of liability for any errors that exist in that information.
Taxability Variations Across Borders	States determine what should be taxed or exempted in their state. However there is no uniformity of definitions amongst states.	States determine what should be taxed or exempted, but follow a list of uniform definitions. Uniform definitions amongst the states makes it easier for retailers.
Policing Tax Exempt Purchasers	Retailer is responsible to determine whether the purchaser was legally able to make exempt purchase.	Uniform exemption certificate available for all exemptions. States must shift the burden from the retailer to the purchaser for claiming improper exemptions.
Technology	Retailers have for a long time had to buy software so they can automate the tax calculations for various state laws.	States certify the accuracy of software providers (Certified Service Providers) to provide business with the right answers. States compensate the CSPs so no cost to the "volunteer sellers" and CSPs handle tax calculation, return preparation, filing, making remittances, resolving notices and audits.
Responsibility for mistakes	The retailer is liable for inaccurate tax decisions and pay penalty and interest for mistakes.	States must provide liability relief for any errors in the tax decision information the state provides.

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South Dakota v. Wayfair Ruling by United States Supreme Court

- U.S. Supreme Court on June 21, 2018 issued its decision in *South Dakota v. Wayfair, Inc. et.al.*, that overturned a previous physical presence requirement for sales/use tax collection purposes (*Bellas Hess* (1967) and *Quill* (1992)) and permitted an “economic and virtual presence” test
- The Court only addressed the first prong of the four prong test contained in their *Comptel Auto* (1977) decision. The first prong requires that a taxpayer have “substantial nexus with the taxing state.”
- South Dakota’s \$100,000 in sales or 200 transactions held by the Court to be sufficient because “the seller availed itself of the substantial privilege of carrying on a business in South Dakota.”
- The Court did not rule on the constitutionality of South Dakota’s law – but simply removed the physical presence standard that had been in place since the *Bellas Hess* and *Quill* decisions.
- The Court remanded the case back to South Dakota to address “whether some other principle in the Court’s Commerce Clause doctrine might invalidate [South Dakota’s law].” The Court noted these other issues were not litigated or briefed and the Court did not resolve them.
- The “other issue” under the Commerce Clause is the possible discrimination against or imposition of undue burden on interstate commerce.
- The South Dakota Supreme Court remanded the case back to the State’s district court to address any other potential commerce clause issues (e.g., fair apportionment, discrimination, etc.). No further litigation ensued since South Dakota and *Wayfair* entered into settlement agreement.
- **The Supreme Court noted three features about South Dakota’s law that appeared to be “...designed to prevent discrimination against or undue burdens upon interstate commerce...”**
 - Transactional Safe Harbor;
 - No retroactive application; and
 - Membership in the Streamlined Sales and Use Tax Agreement (SSUTA)
- **Specific Items Noted in *Wayfair* Decision Related to Streamlined Sales Tax:**
 - Standardizes taxes to reduce administrative and compliance costs
 - Single state level administration
 - Uniform definitions of products and services
 - Simplified tax rate structures
 - Other uniform rules
 - Access to sales tax administration software paid for by the state
 - Sellers who choose to use such software are immune from audit liability

MICHIGAN AND STREAMLINED SALES TAX

SSUT Project began March 2000

- **State governments** (42 + D.C.), local governments & private sector
- **To simplify & modernize** sales and use tax collection and administration
 - Tax law simplification, more efficient administrative procedures & emerging technologies to reduce tax collection burden
 - For both local and remote sellers & for all types of commerce
- **Goals: Encourage voluntary collection/remittance** of tax by out-of-state vendors
 - *National Bellas Hess v Dept of Rev of Illinois*, 386 US 753 (1967) and *Quill v N Dakota*, 504 US 298 (1992): extreme compliance burden of mandatory collection requirement
 - 7,000+ taxing jurisdictions, with differing rates, tax bases, administration issues (due dates, to whom tax paid, manner of remittance, manner of claiming exemptions), audit procedures and sourcing
 - local taxing jurisdiction boundaries not necessarily the same as political/geographic boundaries

Uniform definitions within tax laws (states determine what's taxable)

Rate Simplification

- 1 state rate with 2nd rate in limited circumstances; 1 local rate
- Notice of rate/boundary changes at restricted times
- On-line rate and boundary databases

State level administration of all state & local sales and use taxes

- One return for state/local taxes
- States distribute local taxes to local governments
- Common tax base statewide

Uniform Sourcing rules – destination sourcing

Simplified exemption administration for use/entity-based exemptions

- eliminate “good faith” requirements
- purchaser responsible for tax for claiming incorrect exemption
- uniform exemption certificates (paper or electronic)

Uniform audit procedures

- Model 1/2/3 sellers will have limited scope audits, depending on technology model used
- States may conduct joint audit of large multi-state businesses

State funding of SST system – cost of collection for technology models

Streamlined Sales and Use Tax Agreement

- approved Nov. 12, 2002 (30 states + D.C.)
- did not modify any state's laws
- **Michigan**
 - did not allow local jurisdiction tax
 - had administration centralized at state level
 - **differed** from SSUTA in some **definitions** (e.g. product definitions such as food and medical goods, and what is included in “sales price”) and **administrative provisions** (e.g. date for filing returns)
- effective when at least **10 states** with at least **20% of the population** of states

- with sales tax approved the Agreement.(October 1, 2005)
 - full members: AR, GA, IN, IA, KS, KY, MI, MN, NE, NJ, NV, NC, ND, OH, OK, RI, SD, UT, VT, WA, WV, WI, WY
 - associate member: TN
- **Substantial Compliance** (Petition, Certificate of Compliance)(SSUTA §§801-805)
- **Rates and Boundaries Databases** (SSUTA §§305-307)
 - ZIP code or address based
 - liability relief for reliance by sellers/CSPs
- **Taxability Matrix** (SSUTA §328 – liability relief for reliance by sellers/CSPs; SSUTA §331 eff. 1/1/09 – liability relief for reliance by purchasers)
- **Amnesty** (SSUTA §402)
 - o for sales/use taxes uncollected or unpaid on sales by eligible retailers for any period prior to SST registration
 - o seller must register within 12 months of state’s participation in SSUTA (for MI – by 9/30/06)
- **Methods of Remittance** (SSUTA §403)
 - **Model 1 (Certified Service Provider)** - CSP performs all the seller’s sales/use tax functions except seller’s obligation to remit tax on its own purchases
 - CSP compensation for volunteer sellers (tax remitted per seller for all states)

<\$250,000	8 %
\$250,000 - \$1,000,000	7 %
\$1,000,001 - \$2,500,000	6 %
\$2,500,001 - \$5,000,000	5 %
\$5,000,001 - \$10,000,000	4%
\$10,000,001 - \$25,000,000	3 %
>\$25,000,000	2 %
 - **Model 2 (Certified Automated System)**
 - CAS calculates the amount of tax due on a transaction
 - **Model 3** (Seller uses its own **proprietary system** that has been certified as a CAS)
 - **Model 4** (other)
- **Central on-line registration** (SSUTA §401)
- **Simplified Electronic Return (SER)** (SSUTA §318)
- **Return due date** – not earlier than 20th of month after tax period (SSUTA §318)
- **Electronic Remittance** (ACH Debit/Credit) may be required for Model 1/2/3 sellers (SSUTA § 319)
- **Definitions** – SSUTA Appendix C (Library of Definitions)
- **Interpretations** – SSUTA Appendix D (Library of Interpretations)
- **Governing Board**, State and Local Advisory Council (**SLAC**), Business Advisory Council (**BAC**), Compliance Review and Interpretation Committee (**CRIC**)(SSUTA §§806, 810, 811)
- **SST website:** www.streamlinedsalestax.org (SSUTA, Issue Papers, Meeting Minutes, Bylaws, Rules, etc.)

Michigan Streamlined Legislation – effective September 1, 2004 (Admin.Act effective July 1, 2004)

Streamlined Sales and Use Tax Administration Act (P.A. 2004, No. 174; MCL 205.801 et seq) - authorizes the State Treasurer to enter into the Agreement with other states and details the manner in which Michigan will participate.

- Clarifies that State law controls and the Agreement does not modify State law except as the terms of the Agreement are adopted and expressed in Michigan statutes.
- Establishes a State delegation consisting of up to four persons to represent Michigan on the Governing Board created under the Agreement.
- Provides that the State may terminate participation in the Agreement if it is determined by the State Treasurer or by joint resolution of the legislature to be in the best interest of the State.
- Authorizes a system allowing for centralized registration by sellers seeking to register under the Agreement.
- Establishes technological models that may be used by sellers registered under the Agreement in collecting and remitting tax under the Agreement.
- Provide for privacy protection and limit the use and disclosure of identifying information obtained in the administration of taxes under the Agreement.
- Establish an amnesty for a limited time period for sellers who agree to register under the Agreement and collect and remit taxes to this State.

Streamlined Sales and Use Tax Revenue Equalization Act (P.A. 2004, No. 175; MCL 205.171 et seq) - separately imposes taxes and provides credits to modify the impact of the changes made to the General Sales Tax Act and the Use Tax Act.

- **Section 5** (MCL 205.175). Provides a levy on **interstate motor carriers** for the privilege of consuming **diesel fuel** in the State **at a cents per gallon rate** based on a statewide average price of diesel fuel. A credit is given for 6% of the actual price of diesel purchased in the State upon which sales tax was paid. This tax was moved intact and without change from the Use Tax Act to the Equalization Act because the tax base is expressed as "cents per gallon" which deviates from the definition of "price" mandated by the Agreement for sales and use taxes. The use tax was collected on the International Fuel Tax Agreement (IFTA) return, and that collection method is retained in the Equalization Act. As a result, this "new" tax appeared as a seamless change to those affected.
- **Section 9** (MCL 205.179). Provides for a tax on the privilege of storing, registering, or **transferring ownership of a vehicle not obtained from a dealer, an ORV, manufactured housing, a snowmobile, a watercraft or certain aircraft**. These items were previously taxed using a use tax base which was the greater of purchase price paid or retail dollar

value at the time of acquisition. This base does not comply with the Agreement definition of "price" which is required to be used in the Use Tax Act. To retain revenue neutrality, the imposition of a tax on retail dollar value was moved to the Equalization Act. A **non-refundable credit for use tax paid on purchase price** is provided and can be used to totally or partially offset the equalization tax obligation.

- **Section 11 (MCL 205.181).** Provides for imposition of a tax for the privilege of storing, registering, or transferring ownership of a **qualified aircraft that was purchased outside of the state solely for personal (non-business) use which is subsequently brought into Michigan under certain specific circumstances.** Prior to Streamlined, the tax base for these qualified aircraft was the **"value of the aircraft at the time it first enters this state."** This base does not comply with the Agreement definition of "price" for sales and use taxes. To retain revenue neutrality, the imposition of a tax on the value upon entry into Michigan was moved to the Equalization Act. A credit for use tax paid on purchase price is provided and can be used to offset the equalization tax obligation or refunded.
- **Section 13 (MCL 205.183).** Establishes a **refund provision for those hotels, motels and similar establishments which provide accommodations and pay the convention and tourism and marketing, the state convention facility development, the regional tourism marketing, or the community convention and/or tourism marketing tax.** These impositions were expressly exempted from the use tax prior to Streamlined. Under Streamlined these taxes must be included in the use tax base or "price" of the services being taxed. In order to attain revenue neutrality, persons that pay use tax calculated on these specific taxes may seek refunds of the amount of use tax paid on the specific taxes.

Use Tax Act Amendments (P.A. 2004, No. 172; MCL 205.51 et seq) and - **General Sales Tax Act Amendments** (P.A. 2004, No. 173; MCL 205.91 et seq) substantive changes to the sales and use tax provisions of State law. Efforts were made to minimize revenue impact by maintaining both the current tax base and current exemptions. In some cases current law was easily modified to comply with the Agreement by making changes in form.

In other instances compliance with the Agreement resulted in unavoidable changes to the tax base. In cases where the revenue consequences were small, further adjustment was not made. In other cases the resulting changes are addressed in the Streamlined Sales and Use Tax Revenue Equalization Act by either imposing a tax or providing a credit to retain revenue neutrality.

Substantive Changes to the Sales and Use Tax Statutes to Comply with the Agreement

- **Food** (MCL 205.54g, 205.94d) : Prior to Streamlined, Michigan taxed "prepared food intended for immediate consumption." Other food was exempt. The Agreement definition of "prepared food" differs slightly from the previous definition. This resulted in a slight expansion of the exemption.

EXAMPLE: Prior to Streamlined, Michigan law provided that food arranged on a plate or platter, whether intended for individual or multiple servings and whether sold by the pound or by the serving was taxed as "prepared food intended for immediate consumption." "Deli trays" were generally subject to tax. Under Streamlined, food sold in an unheated state by weight or volume as a single item is taxable only if sold with eating utensils. Under Streamlined, "**deli trays**" will generally not be subject to tax.

- **Medical Goods** (MCL 205.51a, 205.54a(h), 205.92b, 205.94(1)(p)): Michigan law prior to Streamlined exempted "hearing aids, contact lenses if prescribed for a specific disease that precludes the use of eyeglasses, or any other apparatus, device, or equipment used to **replace or substitute for a part of the human body, or used to assist the disabled person to lead a reasonably normal life...**" Under Streamlined, exemptions for these types of items may only be done by expressing the exemptions using the terms defined in the Agreement. These terms are "**durable medical equipment,**" "**mobility enhancing equipment,**" and "**prosthetic device.**"

EXAMPLE: Prior to Streamlined, equipment that was not used to replace or substitute for a part of the human body would only be exempt if it was used to assist a disabled person to lead a reasonably normal life. This requirement of disability does not exist under Streamlined. Rather, the exemption rests upon the nature of the equipment and its use.

- **Sourcing of Gifts** (MCL 205.69, 205.110): Prior to Streamlined, Michigan law treated purchases made for gifting to a person outside of the State as made in Michigan and therefore subject to tax in Michigan. Streamlined, in accord with the practice in the majority of other states, sources gift purchases to the **destination** state.

EXAMPLE: A buyer located in Michigan purchases a gift item from a Michigan retail location to be sent to a third person in Ohio. The buyer does not take physical possession of the gift item but instead directs the store to ship the item to the unrelated third party in Ohio. Under Streamlined the transaction will be sourced to Ohio and any tax collected will properly be payable to Ohio.

- **Credit for tax on rentals** (MCL 205.94a(b)): Prior to Streamlined, Michigan law afforded an exemption from use tax on rental receipts for items purchased for rental where sales or use tax had been paid to

Michigan on the purchase price. The amendments extend this credit to sales or use taxes paid to any state on the purchase price amount.

- **Bad Debt (MCL 205.54i, 205.99a):** Prior to Streamlined, Michigan law required that the period of limitations for taking a bad debt deduction be measured from the return due date of the period in which the sale was made. Streamlined applies a **longer limitation period** based on when the debt is, or could be, written off for federal income tax purposes. Streamlined also allows deduction for **debts that have been sold to a third party and then re-transferred back to the seller**. The general four year statute of limitations was previously applied from the return due date for the period within which the sale was made. Under Streamlined, the **four year statute of limitations begins with the return due date for the period within which the debt becomes worthless and is, or could be, written off for federal income tax purposes**.
- **Prescription drugs (MCL 205.54g(1)(a), 205.94d(1)(a)):** The Streamlined amendments **codified case law decided prior to** the Court of Appeals decision in **Birchwood Manor Inc. v Commissioner of Revenue**, 261 Mich App 248 (2004). After the Streamlined amendments, the exemption for prescription drugs was limited to **drugs for human use that could only be legally dispensed by prescription of a qualified licensed health professional**.

Administrative Changes

- **Return filing requirement (MCL 205.56, 205.96):** Under Streamlined, returns are due on the **twentieth day of the month** following the end of the filing period, rather than the fifteenth day.
- **Calculation of tax and reimbursement amounts (IPD 2004-5):** Not later than January 1, 2006 taxpayers that reimburse themselves for sales tax and taxpayers that remit use tax must compute the tax to the third decimal place and **round** up to a whole cent when the third decimal place is greater than 4 or round down to a whole cent when the third decimal place is 4 or less. Beginning January 1, 2006 the **bracket system was no longer permitted** as a method for sellers to calculate sales tax that they pass on to a purchaser.
- **For SST-registered Model 4 volunteer taxpayer, returns are due annually, or when \$1,000 or more in tax funds are accumulated (IPD 2004-3).**