

MEMORANDUM

To: Bryan Kelly, Chair, Nexus Committee

From: Richard Cram, Director, National Nexus Program

Re: Proposal for Streamlined Sales Tax Voluntary Disclosure Program

Date: November 20, 2024

The Streamlined Sales Tax Governing Board considered a proposal at its October 9, 2024 meeting in Charlotte, N.C. to amend the Agreement to delete the current amnesty provision in Section 402 and replace it with a provision establishing a voluntary disclosure program (attached). The Board determined that the proposal needed further development, and Craig Johnson, Executive Director, stated that this topic would be brought back up for an update and further discussion during the Governing Board's teleconference on December 20, 2024. Angélica Serrano-Román, "Sales Tax Group to Continue Drafting Voluntary Disclosure Program," *Bloomberg Law News* (October 9, 2024).

The proposal presented at the October 9 meeting would require that all Member States in the Agreement participate in the Program unless otherwise prohibited by law. There are currently 23 Member States and one Associate Member State in the Agreement.

Note: The following states are Member States in the Agreement and also participate in the MTC Multistate Voluntary Disclosure Program: Arkansas, Georgia, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee (associate member status), Utah, Vermont, Washington, West Virginia, and Wisconsin.

The proposed effective date of the program would be January 1, 2025, but presumably, this date likely may be extended until sometime after the proposal is fully developed and voted upon for approval by the Governing Board.

"Qualified remote sellers" would be eligible to participate in the proposed program for sales/use tax relief and would need to meet the following requirements: (1) register or agree to register in all participating states in which it has economic nexus through the Streamlined Sales Tax Centralized Registration System; (2) agree to file returns or spreadsheets for the twenty-four month lookback period; (3) agree to pay the balance due for the lookback period or enter into a payment plan with the state; (4) agree to stay registered with the state so long as the seller exceeds the economic

nexus threshold; (5) agree to comply with the procedures of the program; and (6) has not participated in the program previously.

A “qualified remote seller” would not include a seller that: (1) has received notice of audit from the state prior to registration; (2) has been previously registered with the state or notified by the state to register and exceeded the state’s economic nexus threshold during the period of registration; or (3) has collected but not remitted sales tax for the state.

The twenty-four month lookback period would apply for all participating states unless state law prohibited it, and it would be measured from the date that the seller notifies the Governing Board that it wants to participate in the program. Penalties also must be waived, to the extent allowed by state law.

The time limit for the “qualified remote seller” to apply is the later of one year from the effective date of the program or within three years of the date when the seller first exceeded the state’s economic nexus threshold.

A motion by Nebraska to repeal the current amnesty requirement contained in Section 402 of the SSUTA and replace it with a requirement to provide a limited lookback period for remote sellers effective January 1, 2025

Section 402: ~~AMNESTY FOR REGISTRATION~~

~~A. — Subject to the limitations in this section:~~

~~1. — A member state shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers through the Streamlined central registration system for the state in which the amnesty is sought if the seller pays or collects and remits the applicable sales or use tax in accordance with the terms of the Agreement on sales made to purchasers in all the full member states in which the seller makes sales.~~

~~Sellers that are only making wholesale sales in a state which does not require wholesalers to register and sellers who only make sales through a marketplace facilitator in a state which does not require those sellers to register, would not be required to register in those states to qualify for the amnesty. The amnesty does not apply if the seller was registered in that state in the twelve-month period preceding the effective date of the state's participation in the Agreement.~~

~~2. — The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the state, provided registration occurs within twelve months of the effective date of the state's participation in the Agreement.~~

~~3. — Amnesty similarly shall be provided by any additional state that joins the Agreement after the seller has registered.~~

~~B. — The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.~~

~~C. — The amnesty is not available for sales or use taxes already paid or remitted to the state or to taxes collected by the seller.~~

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~~D. — The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty six months. Each member state shall toll its statute of limitations applicable to asserting a tax liability during this thirty six month period.~~

~~E. — The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.~~

~~F. — A member state may allow amnesty on terms and conditions more favorable to a seller than the terms required by this section.~~

STREAMLINED SALES TAX VOLUNTARY DISCLOSURE PROGRAM FOR REMOTE SELLERS

A. Unless otherwise prohibited by state law, each member state shall participate in the Streamlined Sales Tax Voluntary Disclosure Program for “qualified remote sellers.”

1. A “qualified remote seller” is a seller who:

- a. Certifies to the Streamlined Sales Tax Governing Board (Governing Board) and applicable member states that it would not be required to register to collect and remit sales or use tax in the state if it did not meet or exceed the state’s economic nexus threshold;
- b. Is registered or agrees to register through the Streamlined Sales Tax Registration System in each full member, contingent member, associate member and nonmember participating state in which it meets or exceeds the state’s economic nexus threshold;
- c. Agrees to prepare and file the returns or comparable spreadsheets for the lookback period;
- d. Agrees to immediately pay the balance due for the lookback period, or works out in advance with the state a payment plan related to the balance due for the lookback period;

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- e. Agrees to remain registered and collect and remit the taxes due on any future transactions into the state until the qualified remote seller's activities in the state no longer meet or exceed the state's economic nexus thresholds;
 - f. Agrees to follow the procedures contained in the Streamlined Sales Tax Governing Board's Rules and Procedures related to the Streamlined Sales Tax Voluntary Disclosure Program, including completing any and all forms required to be completed by the Governing Board or the member state(s) to participate in this program; and
 - g. Has not participated in this program previously.
 - 2. A "qualified remote seller" does not include a seller who:
 - a. Received notice of audit prior to registering through the SSTRS;
 - b. Was previously registered with the state or contacted by the state about registering to collect and remit sales or use tax and the seller has economic activity in the state that exceeds the state's economic nexus thresholds at the time of registration;
or
 - c. Who has collected and failed to remit sales tax for that state.
- B. Under the Streamlined Sales Tax Voluntary Disclosure program, each member state shall, absent any fraud or intentional misrepresentation on the part of the "qualified remote seller":
 - 1. Limit the lookback period on each "qualified remote seller" who notifies the Streamlined Sales Tax Governing Board (Governing Board), in the manner determined by the Governing Board, to no more than the prior 24 months, unless a state is required under its laws to have a longer lookback period, from when the "qualified remote seller" notifies the Governing Board that it wants to participate in the program.
 - a. Sellers must notify the Governing Board no later than the later of:
 - i. one calendar year after this amendment is effective; or

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ii. within 3 years after the remote seller has met the state’s economic nexus threshold.

b. The limited lookback period does not apply to any sales or use taxes that were previously paid or reported to the state or collected by the state.

c. The limited lookback period does not include any periods in which the seller did not meet or exceed the state’s economic nexus threshold.

2. Eliminate all penalties and late filing fees during the lookback period to the extent allowed by the member state’s laws;

A member state may allow terms and conditions more favorable to a seller than the terms required by this section.

C. The Streamlined Sales Tax Governing Board shall promulgate rules that govern the process a “qualified remote seller” must follow to participate in the program and any required forms.