

Streamlined sales tax amnesty

by Roger Russell

Although the general amnesty for businesses under the Streamlined Sales and Use Tax Agreement expired on September 30, 2006, as new states join the agreement they will offer amnesty for a 12-month period.

In addition, for a company that uses a certified service provider or certified automated system, the agreement's governing board says that states should keep amnesty open for one year from the date those systems became available, which was June 1, 2006, according to Daniel Schibley, senior analyst for CCH's state tax group.

"If a business wants to use one of those certified models then the states are supposed to keep amnesty open until May 31, 2007, if they are able," he said.

"Michigan was not able to do that, so in Michigan amnesty is closed, but the other 12 of the original full member states are supposed to keep it open until the end of May for those sellers that want to use one of the two certified models."

"It was the recommendation of the governing board but not every state was able to authorize that because they would need to change their statutes, so not all are following it," said Diane Yetter, CPA, of Chicago-based Yetter Consulting Services Inc.

"Part of the Streamlined Sales Tax Agreement was simplifying and making alternative collection models available for taxpayers, so the certified service provider in essence is an outsourcing of the sales tax function," she said.

"You establish an interface between your billing system and the CSP, and the CSP maintains the rates that apply to your transactions, calculates the tax and brings it back to the customer invoice."

"There have always been providers that would help you calculate the tax," Yetter noted. "Under the agreement, however, the CSP is liable for filing, remittance and auditing, so the seller in these states is no longer liable for sales tax collection errors. This was one of the carrots to get people to register."

With the addition on January 1, 2006 of Vermont and Rhode Island, there are currently 21 member states to the agreement.

The amnesty under the agreement gives companies a waiver of liability for previously uncollected or unpaid sales taxes in each state participating in the agreement.

"There are eight states where you can still qualify for amnesty," said Yetter. "These are Rhode Island, Vermont, Arkansas, Nevada, Ohio, Tennessee, Utah and Wyoming. If you

have exposure in one of those states you can eliminate prior exposure risk by registering under the agreement,” she said.

“But you have to evaluate the risk of coming forward because once you do, there are 21 states that know who you are. Then you have to collect sales tax for them, which can become a competitive disadvantage.”

The streamlined sales tax agreement is an outgrowth of the streamlined sales tax project, or SSTP. The SSTP itself was a reaction by states to the 1992 Supreme Court decision in *Quill*, which ruled that out-of-state retailers are not required to collect taxes in jurisdictions in which they do not have a physical presence. The Court implied that states must first simplify their laws before they could require retailers to collect and remit such taxes.

The agreement creates a simplified sales and use tax collections system with uniform definitions of taxable items, sets rules for sourcing transactions and centralizes the registration and administration process for participating retailers. Adherents hope that eventually Congress will require out-of-state merchants to collect sales taxes on all sales to customer in the member states.

“A state joins by changing its tax laws to conform to the agreement,” said Dick Eppelman, director of government markets for Vertex. “The larger states that haven’t joined—California, New York, Pennsylvania and Texas—are saying in essence that the economic benefit to the state to join may not be substantial enough for them to change their current system.”

The ambiguity in the decision to register lies in the meaning of “nexus,” which is the minimum amount of contact between a taxpayer and the state that would permit taxation by the state. Although nexus arises from the Constitution’s due process clause and the commerce clause, the standards are not explicit and the states vary as to how they apply them to activities within their borders.

Moreover, the standards in a particular state may shift from year to year at the whim of its legislature or taxing authority. As a result, amnesty is one of the main attractions of the agreement.

“For companies that truly don’t have nexus, many haven’t signed up because they perceive that it would put them at a competitive disadvantage,” said Kristy Magill, national managing director of state and local tax consulting for RSM.McGladrey.

“The vast majority of companies that signed up did not sign up to use the free technology that was offered. Most that signed up used it as a way to get rid of prior liabilities that they knew existed.”

“I’m not aware of a single client of ours that signed up for this,” said Neil Becourtney, a tax partner at New York regional firm J.H. Cohn’s tax advisory services.

“There’s really no benefit at this point unless you’re a company with headquarters, say, in New York and a sales force in 30 different states. If you’re not registered as a sales tax vendor in any of those states and are selling tangible property to end users, it might be a good thing to come in and get amnesty in one fell swoop.”