

State and Local Tax ADVISORY

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(Good) Faith No More: The SSUTA's Exemption Certificate Standard

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Introduction

With the addition of Georgia on August 1, 2011, 24 states have adopted legislation conforming their sales and use tax laws with the Streamlined Sales and Use Tax Agreement.¹ The SSUTA covers several broad categories of state sales and use tax law, and this article focuses on the simplified administration of exemptions. More specifically, we analyze the SSUTA's exemption certificate requirement, which relieves a seller of liability for an otherwise taxable sale if the seller accepts a fully completed exemption certificate.² Under the SSUTA, this "fully completed certificate" standard replaces the long-standing "good faith" standard. This article attempts to shed light on this change by providing a summary of the SSUTA's standard, as well as our analysis of its implications for sellers, purchasers and state taxing authorities.

SSUTA's Exemption Certificate Provisions

SSUTA member states are required to administer sales tax exemptions in substantial compliance with the SSUTA. Originally, the SSUTA addressed exemption certificates only tangentially, requiring sellers to obtain a "state approved certificate" from purchasers claiming entity- or use-based exemptions from sales and use tax on otherwise taxable purchases.³ "Each state or taxing jurisdiction," however, "ha[d] its own rules for administering its exemption administration process," which frustrated the SSUTA's

1 The other SSUTA member states are Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming. The Streamlined Sales Tax Governing Board has noted that conforming legislation was recently introduced in California, Florida, Hawaii, Illinois, Maine, Massachusetts, Missouri, Texas and Virginia. See Streamlined Sales Tax Governing Board Inc., Frequently Asked Questions, *available at* <http://www.streamlinedsalestax.org/index.php?page=faqs>.

2 SSUTA section 317(C). Note that the SSUTA has been amended several times. This article references the current version as of December 13, 2011, which we retrieved from <http://www.streamlinedsalestax.org/uploads/downloads/Archive/SSUTA/SUTA%20As%20Amended%2005-19-11.pdf>.

3 Streamlined Sales Tax Project, "Issue Paper on Simplified Exemption Administration Process," at 1 (approved Apr. 16, 2005).

goals.⁴ As a result, the Streamlined Sales Tax Project endeavored to create “a more uniform and simplified exemption administration process” to reduce the administrative burdens and costs facing sellers.⁵ The SSUTA was revised in 2005 to reflect SSTP’s efforts.

As revised, the SSUTA does relieve the seller of some administrative and compliance burdens, and it generally provides more detailed guidance regarding exemption certificates. In particular, a seller will be protected from liability if it obtains a fully completed certificate (or captures the relevant data elements required under the SSUTA) within 90 days after the date of the otherwise taxable sale.⁶ The fully completed requirement applies both when the exemption certificate is received by the seller on the date of the sale and also within 90 days following the sale.⁷

According to the Streamlined Sales Tax Governing Board, a seller will have obtained a fully completed exemption certificate if the seller “captures the information on the form that is part of SSUTA’s required standard data elements.”⁸ Those data elements include the purchaser’s name and address; the type of business; the purchaser’s reason for claiming the exemption; the ID number required by the state where the sale is sourced; and the purchaser’s signature (if a paper exemption certificate is used).⁹

4 *Id.*

5 *Id.* Note that a simplified exemption process is not the same thing as mandating uniform sales and use tax exemptions. In fact, under the SSUTA, “states are free (subject to definitional constraints) to allow exemptions as they see fit.” Walter Hellerstein and John A. Swain, *Streamlined Sales & Use Tax*, para. 7.06[1], at 7-13 (2004).

6 SSUTA section 317(C).

7 Different requirements come into play under the SSUTA for sellers that have not obtained an exemption certificate within the 90-day window. Most notably, the good faith standard is reinstituted at this time. Section 317(D) of the SSUTA provides that:

1. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection (C) a member state shall provide the seller with 120 days subsequent to a request for substantiation by a member state, to either:

a. Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, (ii) could be applicable to the item being purchased, and (iii) is reasonable for the purchaser’s type of business; or

b. Obtain other information establishing that the transaction was not subject to the tax. A member state may provide for a period longer than 120 days for sellers to obtain the necessary information.

2. If the seller obtains the information described in subsection D 1 of this section, the member state shall relieve the seller of any liability for the tax o[n] the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due o[n] the transaction. The state must establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

8 Streamlined Sales Tax Governing Board, Audit Committee, Exemption Administration Training Related to Accepting Certificates, available at <http://www.streamlinedsalestax.org/uploads/downloads/PresentationSST%20Tax%20Exempt%20Training%20050511.ppt>.

9 *Id.*

The SSUTA does not provide protection from liability for fully completed exemption certificates, however, to (i) a seller who fraudulently fails to collect tax and (ii) a seller who solicits purchasers to participate in the unlawful claim of an exemption.¹⁰ However, absent such fraud on the seller's part, "if the purchaser provides a fully completed exemption certificate to the seller within 90 days of the sale, the state auditor must accept the certificate," even if the auditor believes that it is invalid.¹¹ Accordingly, under the SSUTA, sellers have a fairly low compliance burden and enjoy a relatively large safe harbor when it comes to making sales of tangible personal property to purchasers claiming exemptions.¹²

Georgia, the newest member state, has amended its statute to provide that the Department of Revenue "shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate approved by the Streamlined Sales Tax Governing Board, the department, or the Multistate Tax Commission or captures the relevant data elements required under the [SSUTA] within 90 days subsequent to the date of sale."¹³ Notably, the Georgia statute does not include a provision addressing a seller's fraudulent behavior; however, we understand that the DOR's position is that sellers will not be relieved from liability in cases of fraud. Other than audit situations in which

10 SSUTA section 317(B). An additional exclusion applies for entity-based exemptions. *See id.* (providing that relief from liability does not apply "to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates . . . that the claimed exemption is not available in that state").

11 Exemption Administration Training, *supra* note 8.

12 We note that the SSUTA does incorporate a good-faith standard for sellers on audit. *See* SSUTA section 317(D) (reproduced *supra* note 7). However, the primary focus of this article is on the compliance standard at the moment of sale (or within 90 days thereafter).

13 O.C.G.A. section 48-8-38(f) (eff. Jan. 1, 2011). For examples of other state enactments of the "fully completed" standard, *see* Ind. Code section 6-2.5-8-8(d) (eff. Jan. 1, 2008) ("A seller that accepts an incomplete exemption certificate under subsection (a) is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains: (1) a fully completed exemption certificate; or (2) the relevant data to complete the exemption certificate; within ninety (90) days after the sale."); R.I. Regs. SU 07-95 (eff. Jan. 3, 2007) ("Sellers who accept a properly completed resale exemption certificate, absent fraud or collusion, are relieved of liability for improperly claimed exemptions.").

no certificate is provided at the time of the sale or within 90 days after,¹⁴ the concept of good faith currently plays no role in a Georgia seller's decision to accept or reject a purchaser's exemption or resale certificate.¹⁵

The Good-Faith Requirement

In non-SSUTA member states, the typical exemption certificate provisions require that sellers must have accepted a certificate in *good faith* in order to be protected from liability. That was also the case in many (if not all) SSUTA member states before joining SSUTA.¹⁶ Again using Georgia as an example of such a state, before amending its statute, Georgia provided that an exemption certificate relieves a seller from the burden of proving that a sale of tangible personal property is not at retail:

Only if taken in good faith from a person who (1) Is engaged in the business of selling tangible personal property; (2) Holds the permit provided for in this article; and (3) At the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold

¹⁴ See, e.g., O.C.G.A. section 48-8-38(f):

If the seller has not obtained a fully completed exemption certificate or all relevant data elements required under the Streamlined Sales and Use Tax Agreement within 90 days subsequent to the date of sale, the department shall provide the seller with 120 days subsequent to a request for substantiation to either:

(1) Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that:

- (A) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;
- (B) Could be applicable to the item being purchased; and
- (C) Is reasonable for the purchaser's type of business; or

(2) Obtain other information establishing that the transaction was not subject to the tax.

¹⁵ See also N.J. Div. of Tax. Tech. Bulletin No. TB-66 (Sept. 26, 2011) (*"Based on revisions to the SSUTA, good faith as it was commonly understood and applied is no longer applicable at the point of purchase. Rather, there is only a requirement for a completed exemption certificate to be obtained by the seller within 90 days of the sale. Good faith is now only a factor during an audit situation."*) (emphasis in original).

¹⁶ See, e.g., Ark. Code Ann. section 26-52-519(a) (repealed eff. Jan. 1, 2008) ("The sales tax liability for all sales of tangible personal property or taxable services is upon the seller unless, at or before the time of sale, the seller relies in good faith on a claim by the purchaser or documentation provided by the purchaser that the purchaser is entitled to a sales tax exemption."); Mich. Stat. Ann. section 205.67(1) (repealed eff. Jan. 9, 2009) ("If a taxpayer maintains the records required under this section, and accepts an exemption certificate from the buyer in good faith on a form prescribed by the department, the taxpayer is not liable for collection of the unpaid tax after a finding that the sale did not qualify for exemption under this act."); Neb. Rev. Stat. section 77-2703(1)(f) ("The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes, in good faith, from the purchaser (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it."); Wis. Stat. Ann. section 77.52(14)(a)(1) (amended eff. Oct. 1, 2009) (providing that an exemption certificate is only valid if "taken in good faith from a person who is engaged as a seller of tangible personal property or taxable services").

or will be used for some other purpose.¹⁷

Similar standards in other states¹⁸ have led to interpretations of what it means for a seller to take an exemption certificate in good faith. Arizona has defined good faith as “honesty of intention and freedom from knowledge of circumstances that should cause the vendor to deny the claimed deduction or exemption.”¹⁹ The California State Board of Equalization has warned that a vendor’s good faith acceptance of an exemption certificate “may be questioned” if “the property sold is in the opinion of the vendor and from the vendor’s experience of a type that would ordinarily be consumed or used in a nonexempt manner.”²⁰ The Illinois Department of Revenue defined the good faith standard to mean “that a vendor cannot accept a certificate of resale if the vendor knows that the taxable use of the item will be by his customer.”²¹ A New Jersey regulation explained that the “question of ‘good faith’ is one of fact and depends on a consideration of all the conditions surrounding the transaction.”²² The regulation stipulates that “to act in good faith means to act in accordance with standards of honesty.”²³ The New York Department of Taxation and Finance has stated that “accepting an exemption certificate in good faith simply means you have no prior knowledge that the document is falsely or fraudulently issued.”²⁴ In South Carolina, “in order for a seller to take a valid resale certificate in *good faith*, the seller must exercise reasonable prudence to determine the facts supporting the valid resale certificate,” which “includes an honesty of intention and freedom from knowledge of circumstances which ought to alert the seller that he should make inquiry as to the facts.”²⁵ The Texas comptroller has adopted a “should have known” standard for sellers, making actual knowledge irrelevant.²⁶ Although Virginia does not require sellers to “police” their customers’ use of exemption certificates, they are “expected to review the certificates for completeness, and to have an understanding that the class of items being sold falls within the scope of the wording of the exemption certificate.”²⁷ Those definitions and explanations all emphasize the same basic principles regarding the good-faith

17 O.C.G.A. section 48-8-38(b) (eff. until Jan. 1, 2011).

18 See, e.g., Calif. Revenue and Taxation Code section 6421 (“The [exemption] certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith.”); N.Y. Code R. & Regs. 532.4(b)(2) (“A vendor who in good faith accepts from a purchaser a properly completed exemption certificate or, as authorized by the Department, other documentation evidencing exemption from tax not later than 90 days after delivery of the property or the rendition of the service is relieved of liability for failure to collect the sales tax with respect to that transaction.”); Texas Tax Code Ann. section 151.054(b) (“A sale is exempt if the seller receives in good faith from a purchaser an exemption certificate stating qualifications for an exemption provided in Subchapter H of this chapter.”).

19 Ariz. DOR Director’s Decision No. 200700222-S (June 15, 2009).

20 Calif. SBE Sales & Use Tax Annotation No. 222.0510.

21 Ill. Private Letter Ruling No. ST 89-0336-PLR (May 11, 1989).

22 N.J. Admin. Code 18:24-10.4(c).

23 N.J. Div. of Tax. Tech. Bulletin No. S&U-6—Sales Tax Exemption Certificates (1998) (italics in original).

24 N.Y. Dep’t of Tax. & Fin., Pub. No. 750.

25 S.C. Rev. Proc. No. 98-2 (1998).

26 Tex. Comptroller’s Decision No. 48,258 (May 12, 2009).

27 Va. Publ. Doc. Ruling No. 08-9 (Jan. 11, 2008).

standard: A seller will not be relieved from its sales or use tax collection responsibility when it accepts an exemption certificate with knowledge (or constructive knowledge) that the purchaser will not be using the tangible personal property for the stated exempt purpose, even if the seller's activity is not fraudulent, and even if the certificate is otherwise fully completed. The determination is fact-specific, and sellers are expected to connect the dots, so to speak, regarding a particular purchase in order to determine whether the purchaser, the exemption sought and the property being purchased all add up to support the seller's decision not to collect tax. In some states, such as South Carolina, this may involve a duty to conduct an investigation past the four corners of the certificate.

A few examples help illustrate the practical application of the good-faith standard, and are useful in comparing it with the fully completed standard under the SSUTA:

Example 1: *Property cannot be used for the exempt purpose.*²⁸ The purchaser furnishes an exemption certificate to seller. The exemption certificate indicates that the purchaser is claiming an exemption for machinery for new and expanded industry under State A's exemption laws, and the certificate has been fully completed. However, the purchaser is purchasing a set of golf clubs.

Example 2: *The purchaser does not sell the type of property in question.*²⁹ The purchaser furnishes a resale certificate to the seller indicating that the purchaser plans on reselling the property in question, which is a television. The resale certificate is complete and contains all of the SSUTA data elements. However, the purchaser is a convenience store (and does not sell televisions).

Example 3: *The property may be purchased for resale, but the seller suspects that purchaser will not be reselling it.* Assume similar facts as in Example 2, except in this example the purchaser is an electronics store that has furnished a resale certificate to the seller to purchase a video camera. Unlike convenience stores, electronics stores (including the purchaser) sell video cameras. However, because of the relationship between the purchaser and the seller, the seller suspects that purchaser will not be reselling this video camera (for example, because the seller knows that the purchaser is upgrading its interior security system).

Obviously, in Example 1, the seller's acceptance of the exemption certificate for the purchaser's purchase would not be in good faith, because there is no way that seller will be making an exempt use of the property, at least regarding the particular exemption being claimed. Golf clubs would not be considered machinery for a new and expanded industry. No further investigation is required to reach this conclusion—a seller should easily be able to connect the dots. In Example 2, it appears the seller's acceptance of the resale certificate would not be in good faith. At the very least, these circumstances should prompt the seller to question the purchaser to determine whether the exemption claimed is valid. Some state good-faith standards make clear that the seller would need to make

28 This example is taken from Ky. Revenue Cabinet Tax Pol'y No. 51P041 (1990).

29 This example is borrowed from Hellerstein and Swain, *supra* note 5, para. 7.06[2], at 7-14.

that determination.³⁰

Example 3 presents a trickier situation for sellers. There is an argument that the seller did not act in good faith by accepting the purchaser's resale certificate because it knows that the purchaser plans to upgrade its security system and could be using this video camera for its own purposes and not selling it. However, it is possible that the video camera could be resold, because it belongs to the general type of property the purchaser sells, and the seller does not know for certain that it will not be resold. Thus, it is equally plausible that the seller would be able to successfully assert that its acceptance of the certificate was in good faith. The gray area between what constitutes good faith and what does not is substantial. The outcome may turn on how much investigating a seller is required to do under state law, or whether the good faith standard incorporates the principle of constructive notice.

Accordingly, in states that adhere to the good-faith standard rather than the fully completed standard, sellers are tasked with doing more than simply ensuring that a purchaser has fully and properly filled out an exemption certificate. The fact-intensive standard of good faith thus presents a significant burden to sellers and can raise substantial questions and gray areas, as evidenced by these examples.

Application of the SSUTA's Fully Completed Standard: Practical Issues and Analysis

As discussed above, under the good-faith requirement, it is clear that sellers could not have knowledge (or constructive knowledge) about a purchaser's nonexempt use, or had to conduct some reasonable investigation into the purchase, before accepting a purchaser's exemption certificate. Simply accepting a fully completed exemption certificate form would not alone relieve a seller from collecting sales and use tax on a particular sale. However, under SSUTA guidelines, it appears that doing just that will suffice. This lower standard has likely accomplished the SSUTA's stated goal of simplifying the administration of exemptions. Along with this simplification, however, come a few outstanding issues.

Issues for Sellers

Despite the simplicity of the standard, two issues remain for sellers in SSUTA states: (i) determining what constitutes a fully completed certificate and (ii) ascertaining whether a particular transaction would be fraudulent under its state standards. Luckily for sellers, the resolution of the first issue is straightforward. The board has provided that a fully completed form is one that contains all of the required data elements.³¹ The SSUTA does not impose any duty on the seller to investigate beyond the four corners of the form to determine whether the purchaser was truthful in filling out the form.

30 See, e.g., *All Star Amusement, Inc. v. Dir. of Revenue*, 873 S.W.2d 843, 845 (Mo. 1994) ("If a seller possesses information or has knowledge that should raise doubts regarding the buyer's claimed exemption, however, or suspects the genuineness of an exemption certificate, the seller must investigate to the point that it is honestly convinced that the buyer or the transaction is exempt."); S.C. Rev. Proc. No. 98-2 (1998) ("In order for a seller to take a valid resale certificate in good faith, the seller must exercise reasonable prudence to determine the facts supporting the valid resale certificate. This includes an honesty of intention and freedom from knowledge of circumstances which ought to alert the seller that he should make inquiry as to the facts.").

31 Exemption Administration Training, *supra* note 8.

It will be less simple, however, for a seller to determine whether its participation in a particular transaction amounts to fraud. Clearly, when a seller colludes with a purchaser or encourages a purchaser to submit a form with false information, the transaction will be fraudulent. The more difficult question is whether a seller's knowledge of a purchaser's intention to make a purchase that won't be tax exempt is fraudulent. Revisiting the examples discussed above is useful in illustrating this point. In each example, it is evident that the purchaser is likely not entitled to the particular exemption being sought for one reason or another. However, the facts make clear that the exemption certificates were otherwise fully completed—they contained all of the SSUTA data elements. Under section 317(C) of the SSUTA, therefore, the seller would not be liable for the sales and use tax owed on the purchase.

The concern facing sellers is whether a state could successfully argue that the very fact that there would be no way for a purchaser to use the property for the stated exempt purpose is *prima facie* evidence of a seller's fraud. That may be a plausible argument—by accepting the purchaser's exemption certificate, with knowledge that the purchaser cannot be eligible for the exemption, the seller has perhaps participated in a fraudulent transaction. A state would obviously have the strongest case under Example 1, in which the seller can see that golf clubs clearly are not industrial machinery.³² Equally and perhaps more plausible, however, is the argument that because the seller did not take affirmative steps to defraud the state (for example, it did not encourage the purchaser to submit a fraudulent certificate, nor did it otherwise collude with the purchaser), the standard of fraud is not met. There is a dearth of authority from SSUTA states regarding this issue, but we believe that the latter argument is the better one. Simply having knowledge of the circumstances beyond the four corners of the exemption certificate, while it might not mean that the certificate was accepted in good faith, does not mean that a seller has acted fraudulently.³³ And introducing the possibility of fraud in those circumstances when the seller had not colluded with or induced the purchaser would undermine the goal of simplifying the administrative burdens, which is the paramount concern of the SSUTA.

Although there is still some gray area for sellers, the fully completed standard is far more straightforward and easier to comply with than the good-faith standard. Sellers can assert strong arguments that the acceptance of an exemption certificate is not fraudulent even in instances in which the same acceptance would not be in good faith. Because fraud involves an active intent to deceive, it is inherently a more difficult offense for a state to prove than lack of good faith, and most sellers that

32 Section 317(B) of the SSUTA would certainly support this position in the context of an entity-based exemption: "Relief from liability does not apply . . . to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on the uniform form and posting it on a state's website is an indicator) that the claimed exemption is not available in that state."

33 Common definitions of fraud typically require some intent to deceive in addition to knowledge. See, e.g., "Fraud," *Black's Law Dictionary* (9th ed. 2009) (defining fraud to mean, among other things, "[a] knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment").

strive to be law-abiding will have no problems with complying.³⁴ Accordingly, the seller's burdens regarding exemption documentation when making sales is greatly reduced under this standard.

Issues for Purchasers

The effect of the standard's change on purchasers will likely be significant as well. As made clear above, the fully completed standard allows a purchaser a much easier opportunity to obtain a sales and use tax exemption at the time of purchase. As long as the exemption certificate is fully and properly completed, a purchaser should not owe sales or use tax on a purchase. Further, accepting that certificate absolves a seller of liability, even if it is later determined that the purchaser was not entitled to the exemption (absent fraud).³⁵ It is therefore likely that sellers will more readily accept exemption certificates from purchasers.

For those reasons, however, SSUTA states are likely to increase their audit activity of purchasers. Although sellers are still on the hook for accepting certificates that are not fully completed or for engaging in fraudulent activity, if revenue departments believe tax should have been collected, they will have to pursue the purchasers. It will be substantially easier for a state to disprove that a purchaser is entitled to a particular exemption (because, after all, exemptions are usually construed narrowly against a taxpayer) than to prove that a certificate was not properly completed based on a reason outside the document's four corners or that a seller acted fraudulently. Accordingly, we believe that in SSUTA states, purchasers should maintain detailed documentation regarding all purchases on which they claimed an exemption to the extent they are not already doing so. Purchasers should furnish an exemption certificate under the assumption (however unrealistic) that the particular purchase will be subject to audit. This way, purchasers can prepare for the increased audit activity that will no doubt come as more states adhere to this new compliance standard.

Issues for Taxing Authorities

In addition to sellers and purchasers, the SSUTA's fully completed exemption certificate standard will affect state taxing authorities. Auditors will have to become familiar with the standard's requirements, which like any new law or rule will require at least some degree of training. The governing board does provide some training materials, however, and uniformity among SSUTA member states' standards could facilitate information—and best practices-sharing between revenue departments.

Furthermore, the good-faith standard effectively required that sellers police the administration of exemptions, at least to some degree. Under the fully completed standard, a seller will reject an exemption certificate only if it has been filled out incorrectly or does not contain the required information. A seller is not tasked with determining whether the particular purchaser is in fact entitled to the exemption being sought. Without that layer of policing in place, it is conceivable that a state taxing authority's concern over the abuse of exemption certificates will increase.

³⁴ *Id.*

³⁵ SSUTA section 317(C).

Finally, to the extent not covered by legislation or case law, state taxing authorities will have to determine—possibly through the issuing of regulations—what constitutes fraud under the fully completed standard. Many good-faith standards involve determinations regarding both what the seller actually knew and also what the seller should have known about the purchaser, and a few even require the seller to do some investigating before accepting a certificate. Fraud, however, generally requires a finding that the seller intended to defraud the state by failing to collect and remit tax on the sale. Although the fully completed standard will likely be more straightforward as a result, state taxing authorities will be increasingly called on to determine a seller's fraudulent intent, which is a determination that is usually entirely subjective.

Conclusion

In sum, as more states become members of the SSUTA, taxpayers (and state revenue departments themselves) will have to understand and adapt to the accompanying changes to state sales and use tax law, including the administration of exemptions. The SSUTA's fully completed standard represents a significant departure from the previous good-faith standard, at least on paper. Although the change reduces the compliance burden for sellers, it creates several unresolved questions for sellers, purchasers, and state taxing authorities.

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