

**ARTICLE II**  
**DEFINITIONS**

The following definitions apply in this Agreement:

**Section 201: AGENT**

A person appointed by a seller to represent the seller before the member states.

**Section 202: CERTIFIED AUTOMATED SYSTEM (CAS)**

Software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

**Section 203: CERTIFIED SERVICE PROVIDER (CSP)**

An agent certified under the Agreement to perform the seller's sales and use tax functions **as outlined in the contract between the Streamlined Sales Tax Governing Board and the Certified Service Provider**, other than the seller's obligation to remit tax on its own purchases.

*See Compiler's Notes for History.*

**Section 204: ENTITY-BASED EXEMPTION**

An exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

*See Compiler's Notes for history.*

**Section 205: MODEL 1 SELLER**

A seller registered under the Agreement that has selected a CSP as its agent to perform the seller's sales and use tax functions **as outlined in the contract between the Streamlined Sales Tax Governing Board and the Certified Service Provider**, other than the seller's obligation to remit tax on its own purchases.

*See Compiler's Notes for history.*

**Section 206: MODEL 2 SELLER**

A seller registered under the Agreement that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

*See Compiler's Notes for history.*

**Section 207: MODEL 3 SELLER**

A seller registered under the Agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

*See Compiler's Notes for history.*

#### **Section 207.1: MODEL 4 SELLER**

A seller that is registered under the Agreement and is not a Model 1 Seller, a Model 2 Seller or a Model 3 Seller.

*See Compiler's Notes for history.*

#### **Section 208: PERSON**

An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

#### **Section 209: PRODUCT-BASED EXEMPTION**

An exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

#### **Section 210: PURCHASER**

A person to whom a sale of personal property is made or to whom a service is furnished.

#### **Section 211: REGISTERED UNDER THIS AGREEMENT**

Registration by a seller under the central registration system provided in Article IV of this Agreement.

*See Compiler's Notes for History.*

#### **Section 212: SELLER**

A person making sales, leases, or rentals of personal property or services.

*See Compiler's Notes for history.*

*Interpretation issued: The Governing Board issued Interpretative Opinion 2008-01 relating to the definition of "seller." That interpretation can be found in the Library of Interpretations in Appendix D.*

#### **Section 213: STATE**

Any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

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**Appendix C**  
**LIBRARY OF DEFINITIONS**

**Part I** Administrative definitions including tangible personal property. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes.

**Part II** Product definitions. Terms included in this Part are used to impose sales and use taxes, exempt items from sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes these items.

*See Compiler's Notes for history.*

**Part III** Sales tax holiday definitions. Terms included in this Part are core terms that apply in imposing and administering sales and use taxes during sales tax holidays.

**PART I**

**Administrative Definitions**

A “**bundled transaction**” is the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. A “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) “Distinct and identifiable products” does not include:

1. Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the “retail sale” of the products and are incidental or immaterial to the “retail sale” thereof. Examples of packaging that are incidental or immaterial



include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.

2. A product provided free of charge with the required purchase of another product. A product is “provided free of charge” if the “sales price” of the product purchased does not vary depending on the inclusion of the product “provided free of charge.”
3. Items included in the member state’s definition of “sales price,” pursuant to Appendix C of the Agreement.

(B) The term “one non-itemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(C) A transaction that otherwise meets the definition of a “bundled transaction” as defined above, is not a “bundled transaction” if it is:

(1) The “retail sale” of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

(2) The “retail sale” of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(3) A transaction that includes taxable products and nontaxable products and the “purchase price” or “sales price” of the taxable products is de minimis.

(a) De minimis means the seller’s “purchase price” or “sales price” of the taxable products is ten percent (10%) or less of the total “purchase price” or “sales price” of the bundled products.

(b) Sellers shall use either the “purchase price” or the “sales price” of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the “purchase price” and “sales price” of the products to determine if the taxable products are de minimis.

(c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(4) The “retail sale” of exempt tangible personal property and taxable tangible personal property where:

(a) the transaction includes “food and food ingredients”, “drugs”, “durable medical equipment”, “mobility enhancing equipment”, “over-the-counter drugs”, “prosthetic devices” (all as defined in Appendix C) or medical supplies; and

(b) where the seller's “purchase price” or “sales price” of the taxable tangible personal property is fifty percent (50%) or less of the total “purchase price” or “sales price” of the bundled tangible personal property. Sellers may not use a combination of the “purchase price” and “sales price” of the tangible personal property when making the fifty percent (50%) determination for a transaction.

*See Compiler’s Notes for history.*

**“Delivery charges”** means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

A. A member state may exclude all delivery charges from the sales price of all personal property and services, or choose to exclude from the sales price of personal property or services one or more of the following components, and may amend the definition of delivery charges accordingly:

1. Handling, crating, packing, preparation for mailing or delivery, and similar charges; or
2. Transportation, shipping, postage, and similar charges.

B. In addition, a member state may treat “delivery charges” for “direct mail” differently than it treats “delivery charges” for other personal property or services. A member state may exclude all “delivery charges” from the “sales price” for “direct mail” or choose to exclude from the “sales price” of “direct mail” one or more of the following components, and may amend the definition of “delivery charges” accordingly:

1. Handling, crating, packing, preparation for mailing or delivery, and similar charges;
2. Transportation, shipping, and similar charges; or

### 3. Postage.

C. Unless a seller separately states the “delivery charges” or components of “delivery charges” on the invoice or similar billing document given to the purchaser, those non-separately stated charges will not qualify for the exclusion from “sales price.” No member state may require a seller to separately state any “delivery charge” or component thereof.

D. The exclusion of “delivery charges” for “direct mail” shall apply to any sale involving the delivery or mailing of: “direct mail;” printed material that would otherwise be “direct mail” that results from a transaction that a state considers the sale of a service; or printed material delivered or mailed to a mass audience when the costs of the printed materials are not billed directly to the recipients and is the result of a transaction that includes the development of billing information or the provision of data processing services.

E. If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

1. A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
2. A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

*See Compiler’s Notes for history.*

“**Direct mail**” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

*See Compiler’s Notes for history.*

“**Lease or rental**” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

- A. Lease or rental does not include:
1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
  2. A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or
  3. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property.
- B. Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).
- C. This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the [state commercial code], or other provisions of federal, state or local law.
- D. This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals. This definition shall neither impact any existing sale-leaseback exemption or exclusions that a state may have, nor preclude a state from adopting a sale-leaseback exemption or exclusion after the effective date of the Agreement.

**“Purchase price”** applies to the measure subject to use tax and has the same meaning as sales price.

**“Retail sale or Sale at retail”** means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

“**Sales price**” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller's cost of the property sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

Notwithstanding (B) above, a state may elect, by statute or administrative regulation, to exclude from sales price the following types of taxes, but only if that tax is separately stated on the invoice, bill of sale or similar document given to the purchaser:

1. Any or all state and local taxes on a retail sale that are imposed on the seller if the state statute authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer. If there is no state statute authorizing or imposing the local tax, the language in the local ordinance will determine if the local tax may, but is not required, to be collected from the consumer; and/or
2. Tribal taxes on a retail sale that are imposed on the seller if the Tribal law authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer.

Under paragraphs 1. and 2., the exclusion of a specific tax from sales price may not be based on the type of consumer or product sold.

3. Federal excise taxes or fees that are not directly imposed on a consumer that a state specifically lists on its taxability matrix. While a state may designate a category of federal

excise taxes or fees that are excluded from sales price, only those specific federal excise taxes and fees listed on the state's taxability matrix are excludable, which shall include a reference to the specific law (*e.g.*, diesel fuel and special excise taxes imposed under 26 U.S.C. § 4041).

Under paragraph 3., the exclusion of a specific tax or fee from sales price may not be based on the type of consumer.

All exclusions from sales price shall be listed on the state's taxability matrix. Unless a seller seeks an exclusion from sales price, a seller is not required to separately state an exclusion on an invoice, billing or similar document given to the purchaser. A state may exclude from "sales price" the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser. A state may exclude from (C) above, "telecommunications nonrecurring charges" if they are separately stated on the invoice, billing, or similar documents. A state doing so must define "telecommunications nonrecurring charges" as follows:

**"Telecommunications nonrecurring charges"** means an amount billed for the installation, connection, change or initiation of "telecommunications service" received by the customer.

"Sales price" shall not include:

- A. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- B. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and
- C. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

"Sales price" shall include consideration received by the seller from third parties if:

- A. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

- B. The seller has an obligation to pass the price reduction or discount through to the purchaser;
- C. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- D. One of the following criteria is met:
  - 1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
  - 2. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group), or
  - 3. The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

States may also exclude from “sales price” either employee discounts that are reimbursed by a third party on sales of motor vehicles, or manufacturer rebates on motor vehicles, or both.

**“Tangible personal property”** means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software.

*Interpretation Issued: The Governing Board issued Interpretation Opinion 2009-1 relating to the definition of “tangible personal property” on May 12, 2009. That interpretation can be found in the Library of Interpretations in Appendix D.*

**PART II**  
**Product Definitions**

**CLOTHING**

“**Clothing**” means all human wearing apparel suitable for general use. The following list contains examples and is not intended to be an all-inclusive list.

A. “Clothing” shall include:

1. Aprons, household and shop;
2. Athletic supporters;
3. Baby receiving blankets;
4. Bathing suits and caps;
5. Beach capes and coats;
6. Belts and suspenders;
7. Boots;
8. Coats and jackets;
9. Costumes;
10. Diapers, children and adult, including disposable diapers;
11. Ear muffs;
12. Footlets;
13. Formal wear;
14. Garters and garter belts;
15. Girdles;
16. Gloves and mittens for general use;
17. Hats and caps;
18. Hosiery;
19. Insoles for shoes;
20. Lab coats;
21. Neckties;
22. Overshoes;
23. Pantyhose;



24. Rainwear;
25. Rubber pants;
26. Sandals;
27. Scarves;
28. Shoes and shoe laces;
29. Slippers;
30. Sneakers;
31. Socks and stockings;
32. Steel toed shoes;
33. Underwear;
34. Uniforms, athletic and non-athletic; and
35. Wedding apparel.

B. "Clothing" shall not include:

1. Belt buckles sold separately;
2. Costume masks sold separately;
3. Patches and emblems sold separately;
4. Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and
5. Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

C. A member state may exclude items under subsection A.10, "Diapers, children and adult, including disposable diapers," from the definition of "clothing." A state may limit the exclusion to children's diapers or adult diapers. "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements. "Children's diapers" means diapers marketed to be worn by children. "Adult diapers" means diapers other than children's diapers.

*See Compiler's Notes for history.*

*Interpretation issued: The Governing Board issued Interpretation 2006-05 relating to the definition of clothing on August 29, 2006. That interpretation can be found in the Library of Interpretations in Appendix D.*

**"Clothing accessories or equipment"** means incidental items worn on the person or in conjunction with "clothing." "Clothing accessories or equipment" are mutually exclusive of and

may be taxed differently than apparel within the definition of “clothing,” “sport or recreational equipment,” and “protective equipment.” The following list contains examples and is not intended to be an all-inclusive list. “Clothing accessories or equipment” shall include:

1. Briefcases;
2. Cosmetics;
3. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
4. Handbags;
5. Handkerchiefs;
6. Jewelry;
7. Sun glasses, non-prescription;
8. Umbrellas;
9. Wallets;
10. Watches; and
11. Wigs and hair pieces.

“**Essential clothing**” means any article of “clothing” with a sales price below a dollar threshold set by a member state if that state chooses to tax “essential clothing” differently from “clothing.” A state electing to tax “essential clothing” differently from “clothing” may not exempt the portion of the price of any individual item of clothing below its dollar threshold and shall administer the “essential clothing” threshold consistent with the provisions of Section 322, subsections (B), (C)(3), (C)(4) and (C)(7).

*See Compiler’s Notes for history.*

“**Fur clothing**” means “clothing” that is required to be labeled as a fur product under the Federal Fur Products Labeling Act (15 U.S.C. §69), and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. “Fur clothing” is human wearing apparel suitable for general use but may be taxed differently from “clothing.” For the purposes of the definition of “fur clothing” the term “fur” means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins that have been converted into leather or suede, or which in processing, the hair, fleece, or fur fiber has been completely removed.

*See Compiler’s Notes for history.*

**"Protective equipment"** means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use. "Protective equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing," "clothing accessories or equipment," and "sport or recreational equipment." The following list contains examples and is not intended to be an all-inclusive list. "Protective equipment" shall include:

1. Breathing masks;
2. Clean room apparel and equipment;
3. Ear and hearing protectors;
4. Face shields;
5. Hard hats;
6. Helmets;
7. Paint or dust respirators;
8. Protective gloves;
9. Safety glasses and goggles;
10. Safety belts;
11. Tool belts; and
12. Welder's gloves and masks.

**"Sport or recreational equipment"** means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. "Sport or recreational equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing," "clothing accessories or equipment," and "protective equipment." The following list contains examples and is not intended to be an all-inclusive list. "Sport or recreational equipment" shall include:

1. Ballet and tap shoes;
2. Cleated or spiked athletic shoes;
3. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;
4. Goggles;
5. Hand and elbow guards;
6. Life preservers and vests;

7. Mouth guards;
8. Roller and ice skates;
9. Shin guards;
10. Shoulder pads;
11. Ski boots;
12. Waders; and
13. Wetsuits and fins.

### **COMPUTER RELATED**

**“Computer”** means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

**“Computer software”** means a set of coded instructions designed to cause a “computer” or automatic data processing equipment to perform a task.

*See Compiler’s Notes for history.*

**“Delivered electronically”** means delivered to the purchaser by means other than tangible storage media.

**“Electronic”** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**“Load and leave”** means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

**“Prewritten computer software”** means “computer software,” including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more “prewritten computer software” programs or prewritten portions thereof does not cause the combination to be other than “prewritten computer software.” “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances “computer software” of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. “Prewritten computer software” or

a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains “prewritten computer software;” provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute “prewritten computer software.”

A member state may exempt “prewritten computer software” “delivered electronically” or by “load and leave.”

*Interpretation issued: On May 12, 2009 the Governing Board issued Interpretative Opinion 2009-1 relating to the definition of “prewritten computer software.” That interpretation can be found in the Library of Interpretations in Appendix D.*

### **Software Maintenance Contract Definitions:**

A “**computer software maintenance contract**” is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.

A “**mandatory computer software maintenance contract**” is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

An “**optional computer maintenance contract**” is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

A member state may limit the definition of “computer maintenance contract” to one or more of the following:

1. Computer software maintenance contracts with respect to prewritten computer software;
2. Optional computer software maintenance contracts;
3. Mandatory computer software maintenance contracts;
4. Optional computer software maintenance contracts that do not include upgrades and updates delivered electronically, by load and leave, or both;

5. Computer software maintenance contracts that only obligate a vendor of computer software to provide a customer with future updates or upgrades to computer software;
6. Computer software maintenance contracts that only obligate a vendor of computer software to provide a customer with support services with respect to computer software.

A member state may include within its definition of “computer software maintenance contracts” contracts sold by a person other than the vendor of the computer software to which the contract relates.

*See Compiler’s Notes for history.*

### **DIGITAL PRODUCTS DEFINITIONS**

**“Specified digital products”** means electronically transferred:

**“Digital Audio-Visual Works”** which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any,

**“Digital Audio Works”** which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones, and

**“Digital Books”** which means works that are generally recognized in the ordinary and usual sense as “books”.

For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

For purposes of the definitions of “specified digital products”, “transferred electronically” means obtained by the purchaser by means other than tangible storage media.

*See Compiler’s Notes for history.*

## FOOD AND FOOD PRODUCTS

**“Alcoholic Beverages”** means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

**“Bottled water”** means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

*See Compiler’s Notes for history.*

**“Candy”** means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration.

*Interpretations issued: (a) On September 20, 2007 the Governing Board issued Interpretation 2007-03 relating to the definition of “candy.” That interpretation can be found in the Library of Interpretations in Appendix D.*

*(b) On October 30, 2013 the Governing Board issued Interpretation 2013-02 relating to the definition of “candy.” That interpretation can be found in the Library of Interpretations in Appendix D.*

**“Dietary supplement”** means any product, other than “tobacco,” intended to supplement the diet that:

- A. Contains one or more of the following dietary ingredients:
  1. A vitamin;
  2. A mineral;
  3. An herb or other botanical;
  4. An amino acid;
  5. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
  6. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and
- B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not

represented for use as a sole item of a meal or of the diet; and

- C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.

**“Food and food ingredients”** means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include “alcoholic beverages” or “tobacco.” A member state may exclude “bottled water,” “candy,” “dietary supplements” and “soft drinks” from this definition, which items are mutually exclusive of each other.

Notwithstanding the foregoing requirements of this definition or any other provision of the Agreement, a member state may maintain its tax treatment of food in a manner that differs from the definitions provided herein, provided its taxation or exemption of food is based on a prohibition or requirement of that state’s Constitution that exists on the effective date of the Agreement.

*See Compiler’s Notes for history.*

*Interpretations Issued: (a) On October 7, 2010 the Governing Board issued Interpretative Opinion 2010-03 relating to the definition of “food and food ingredients.” That interpretation can be found in the Library of Interpretations in Appendix D.*

*(b) On December 19, 2011 the Governing Board issued Interpretative Opinion 2011-01 relating to the definition of “food and food ingredients.” That interpretation can be found in the Library of Interpretations in Appendix D.*

*(c) On October 30, 2013 the Governing Board issued Interpretation 2013-02 relating to the definition of “candy” and “food and food ingredients.” That interpretation can be found in the Library of Interpretations in Appendix D.*

**“Food sold through vending machines”** means food dispensed from a machine or other mechanical device that accepts payment.

**“Prepared food”** means:

- A. Food sold in a heated state or heated by the seller;
  - B. Two or more food ingredients mixed or combined by the seller for sale as a single item;
- or



- C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

“Prepared food” in B. does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

The following items may be taxed differently than “prepared food” and each other, if sold without eating utensils provided by the seller, but may not be taxed differently than the same item when classified under “food and food ingredients.”

1. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
2.
  - a. Food sold in an unheated state by weight or volume as a single item; or
  - b. Only meat or seafood sold in an unheated state by weight or volume as a single item.
3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.
4. Food sold that ordinarily requires additional cooking (as opposed to just reheating) by the consumer prior to consumption.

Substances within “food and food ingredients” may be taxed differently if sold as “prepared food.” A state shall tax or exempt from taxation “bottled water,” “candy,” dietary supplements,” and “soft drinks” that are sold as “prepared food” in the same manner as it treats other substances that are sold as “prepared food.”

*See Compiler’s Notes for history.*

*Interpretations issued: (a) On April 18, 2006 the Governing Board issued Interpretation 2006-04 relating to the definition of “prepared food.” That interpretation can be found in the Library of Interpretations in Appendix D.*

*(b) On December 14, 2006, the Governing Board issued Interpretation 2006-11 relating to “prepared food.” That interpretation can be found in the Library of Interpretations in Appendix D.*

**“Soft drinks”** means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

*Interpretation issued: (a) On October 30, 2013 the Governing Board issued Interpretation 2013-01 relating to the definition of “soft drinks.” That interpretation can be found in the Library of Interpretations in Appendix D.*

**“Tobacco”** means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

## **HEALTH-CARE**

**“Drug”** means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

- A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- C. Intended to affect the structure or any function of the body.

A member state may independently:

- A. Limit the definition of “drug” to human use (as opposed to both human and animal use) in the administration of its exemption;
- B. Draft its exemption for “drug” to specifically add insulin and/or medical oxygen so that no prescription is required, even if a state requires a prescription under its exemption for drugs;
- C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and other medical facilities;
- D. Determine the taxability of free samples of drugs; and
- E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment of bundled transactions is not otherwise defined in the Agreement.

*Interpretation issued: On June 23, 2007 the Governing Board issued Interpretation 2007-01 relating to the definition of “drug.” That interpretation can be found in the Library of Interpretations in Appendix D.*

**“Durable medical equipment”** means equipment including repair and replacement parts for same, but does not include “mobility enhancing equipment,” which:

- A. Can withstand repeated use; and
- B. Is primarily and customarily used to serve a medical purpose; and
- C. Generally is not useful to a person in the absence of illness or injury; and
- D. Is not worn in or on the body.

A member state may limit its exemption to “durable medical equipment:”

- A. By requiring a prescription;
- B. Based on Medicare or Medicaid payments or reimbursement; or
- C. For home use.

A member state may limit the exemption using any combination of the above but in no case shall an exemption certificate be required.

Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the “durable medical equipment.” A member state may exclude from repair and replacement parts items which are for single patient use only.

A member state may exclude from the product definition of “durable medical equipment” any of the following for purposes enacting a product-based exemption:

1. Oxygen delivery equipment not worn in or on the body, including repair and replacement parts;
2. Kidney dialysis equipment not worn in or on the body, including repair and replacement parts; or
3. Enteral feeding systems not worn in or on the body, including repair and replacement parts.

A member state choosing to enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those items are not worn in or on the body, must also enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those are worn in or on the body.

A member state may limit the product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems using any combination of the following:

- a. By requiring a prescription;
- b. Based on Medicare or Medicaid payments or reimbursement; or
- c. For home use.

*See Compiler's Notes for history.*

**“Feminine Hygiene Products”** means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle, but does not include “grooming and hygiene products” as defined in this Agreement.

**“Grooming and hygiene products”** are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of “over-the-counter-drugs.”

**“Mobility enhancing equipment”** means equipment including repair and replacement parts to same, but does not include “durable medical equipment,” which:

- A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and
- B. Is not generally used by persons with normal mobility; and
- C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

A member state may limit the application of this definition by requiring a “prescription,” or limit an exemption based on Medicare or Medicaid payments or reimbursements.

**“Over-the-counter-drug”** means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. A member state may exclude “grooming and hygiene products” from this definition. The “over-the-counter-drug” label includes:

- A. A “Drug Facts” panel; or

- B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.

**“Prescription”** means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.

**“Prosthetic device”** means a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:

- A. Artificially replace a missing portion of the body;
- B. Prevent or correct physical deformity or malfunction; or
- C. Support a weak or deformed portion of the body.

A member state may exclude any or all of the following from the definition of “prosthetic device:”

- A. Corrective eyeglasses;
- B. Contact lenses;
- C. Hearing aids; and
- D. Dental prosthesis.

A member state may limit the application of this definition by requiring a “prescription,” or limit an exemption based on Medicare or Medicaid payments or reimbursements.

## TELECOMMUNICATIONS

### **Tax Base/Exemption Terms:**

**“Ancillary services”** means services that are associated with or incidental to the provision of “telecommunications services”, including but not limited to “detailed telecommunications billing”, “directory assistance”, “vertical service”, and “voice mail services”.

**“Conference bridging service”** means an “ancillary service” that links two or more participants of an audio or video conference call and may include the provision of a telephone number.

“Conference bridging service” does not include the “telecommunications services” used to reach the conference bridge.

**“Detailed telecommunications billing service”** means an “ancillary service” of separately stating information pertaining to individual calls on a customer’s billing statement.

**“Directory assistance”** means an “ancillary service” of providing telephone number information, and/or address information.

**“Vertical service”** means an “ancillary service” that is offered in connection with one or more “telecommunications services”, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including “conference bridging services”.

**“Voice mail service”** means an “ancillary service” that enables the customer to store, send or receive recorded messages. “Voice mail service” does not include any “vertical services” that the customer may be required to have in order to utilize the “voice mail service”.

**“Telecommunications service”** means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

- A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;
- B. Installation or maintenance of wiring or equipment on a customer’s premises;
- C. Tangible personal property;
- D. Advertising, including but not limited to directory advertising.
- E. Billing and collection services provided to third parties;
- F. Internet access service;

- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- H. “Ancillary services”; or
- I. Digital products “delivered electronically”, including but not limited to software, music, video, reading materials or ring tones.

**“800 service”** means a **“telecommunications service”** that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

**“900 service”** means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for: collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.

**“Fixed wireless service”** means a “telecommunications service” that provides radio communication between fixed points.

**“Mobile wireless service”** means a “telecommunications service” that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, “telecommunications services” that are provided by a commercial mobile radio service provider.

**“Paging service”** means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

*Interpretation issued: On August 17, 2010 the Governing Board issued Interpretative Opinion 2010-02 relating to the definition of “paging service.” That interpretation can be found in the Library of Interpretations in Appendix D.*

**“Prepaid calling service”** means the right to access exclusively “telecommunications services”, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

**“Prepaid wireless calling service”** means a “telecommunications service” that provides the right to utilize “mobile wireless service” as well as other non-telecommunications services including the download of digital products “delivered electronically”, content and “ancillary services”, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

*See Compiler’s Notes for history.*

**“Private communications service”** means a “telecommunications service” that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

**“Value-added non-voice data service”** means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

#### **Modifiers of Sales Tax Base/Exemption Terms:**

The following terms can be used to further delineate the type of “telecommunications service” to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

**“Coin-operated telephone service”** means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.



**“International”** means a “telecommunications service” that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

**“Interstate”** means a “telecommunications service” that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

**“Intrastate”** means a “telecommunications service” that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

**“Pay telephone service”** means a “telecommunications service” provided through any pay telephone.

**“Residential telecommunications service”** means a “telecommunications service” or “ancillary services” provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, “telecommunications service” is considered residential if it is provided to and paid for by an individual resident rather than the institution.

The terms “ancillary services” and “telecommunications service” are defined as a broad range of services. The terms “ancillary services” and “telecommunications service” are broader than the sum of the subcategories. Definitions of subcategories of “ancillary services” and “telecommunications service” can be used by a member state alone or in combination with other subcategories to define a narrower tax base than the definitions of “ancillary services” and “telecommunications service” would imply. The subcategories can also be used by a member state to provide exemptions for certain subcategories of the more broadly defined terms. A member state that specifically imposes tax on, or exempts from tax, local telephone or local telecommunications service may define “local service” in any manner in accordance with Section 327 of the Agreement, except as limited by other sections of this Agreement.

*See Compiler’s Notes for history.*

## PART III

### Sales Tax Holiday Definitions

The definitions in this Part are only applicable for the purpose of administration of a sales tax holiday, as defined in Section 322 (A).

*See Compiler's Notes for history.*

#### A. Administrative Definitions:

**"Eligible property"** means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in a member state.

**"Layaway sale"** means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

**"Rain check"** means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

#### B. Product Definitions:

**"Disaster Preparedness Supply"** means an item purchased in preparation or response to a disaster, including any fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether man-made, resulting from war, or resulting from natural causes. "Disaster Preparedness Supply" shall include the following categories of items: 1) general disaster preparedness supplies; 2) disaster preparedness safety supplies; 3) disaster preparedness food-related supplies; and 4) disaster preparedness fastening supplies.

A member state that wishes to exempt "disaster preparedness supplies" during a sales tax holiday may:

1. exempt all disaster preparedness qualified supplies; or
2. exempt specified classifications of supplies.

A member state may not exempt specific items within a classification, without exempting the entire classification of supplies.

**“Disaster Preparedness General Supply”** is a general purpose item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness safety supplies,” “disaster preparedness food-related supplies,” and “disaster preparedness fastening supplies,” and may be taxed differently. The following is an all-inclusive list:

1. Batteries (excluding automobile and marine batteries) AAA, AA, C, D, 6 volt or 9 volt;
2. Cellular telephone batteries and chargers;
3. Satellite phones;
4. Self-powered light sources;
5. Portable self-powered radios, two-way radios, weather-band radios and NOAA weather radios;
6. Gas or diesel fuel containers;
7. Non-electric food storage coolers;
8. Portable generators; and
9. Storm shutter devices.

**“Disaster Preparedness Safety Supply,”** is a safety item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness food-related supplies,” and “disaster preparedness fastening supplies,” and may be taxed differently. The following is an all-inclusive list:

1. Carbon monoxide detectors;
2. Smoke detectors;
3. Fire extinguishers; and
4. First aid kits.

**“Disaster Preparedness Food-Related Supply”** is a food or food related item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness safety supplies,” and “disaster preparedness fastening supplies,” and may be taxed differently. The following is an all-inclusive list:

1. Artificial ice;

2. Water storage container;
3. Manual can opener; and
4. Bottled water.

**“Disaster Preparedness Fastening Supply”** is a fastening item or an item used for securing property or covering property that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness safety supplies,” and “disaster preparedness food-related supplies,” and may be taxed differently. The following is an all-inclusive list:

1. Bungee cords;
2. Rope;
3. Ratchet straps;
4. Duct tape;
5. Boat anchor;
6. Fender, anchor chain, dock line or similar device;
7. Tarpaulins and other flexible waterproof sheeting; and
8. Ground anchor or tie down kits.

*See Compiler’s Notes for history.*

**“Energy Star Qualified Product”** means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at [www.energystar.gov](http://www.energystar.gov) or successor address.

A member state that wishes to exempt “Energy Star qualified products” during a sales tax holiday may:

1. exempt all Energy Star Qualified Products, or
2. exempt specified Energy Star Qualified Products, or

exempt specified classifications as categorized on the Energy Star product listing

**“School supply”** is an item commonly used by a student in a course of study. The term is mutually exclusive of the terms “school art supply,” “school instructional material,” and “school computer supply,” and may be taxed differently. The following is an all-inclusive list:

1. Binders;
2. Book bags;
3. Calculators;
4. Cellophane tape;
5. Blackboard chalk;
6. Compasses;
7. Composition books;
8. Crayons;
9. Erasers;
10. Folders; expandable, pocket, plastic, and manila;
11. Glue, paste, and paste sticks;
12. Highlighters;
13. Index cards;
14. Index card boxes;
15. Legal pads;
16. Lunch boxes;
17. Markers;
18. Notebooks;
19. Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
20. Pencil boxes and other school supply boxes;
21. Pencil sharpeners;
22. Pencils;
23. Pens;
24. Protractors;
25. Rulers;
26. Scissors; and
27. Writing tablets.

*Interpretation issued: On December 19, 2011 the Governing Board issued Interpretative Opinion 2011-02 relating to the definition of “school supply.” That interpretation can be found in the Library of Interpretations in Appendix D.*

**“School art supply”** is an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms “school supply,” “school instructional material,” and “school computer supply,” and may be taxed differently. The following is an all-inclusive list:

1. Clay and glazes;
2. Paints; acrylic, tempera, and oil;
3. Paintbrushes for artwork;
4. Sketch and drawing pads; and
5. Watercolors.

**“School instructional material”** is written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms “school supply,” “school art supply,” and “school computer supply,” and may be taxed differently. The following is an all-inclusive list:

1. Reference books;
2. Reference maps and globes;
3. Textbooks; and
4. Workbooks.

**“School computer supply”** is an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms “school supply,” “school art supply,” and “school instructional material,” and may be taxed differently. The following is an all-inclusive list:

1. Computer storage media; diskettes, compact disks;
2. Handheld electronic schedulers, except devices that are cellular phones;
3. Personal digital assistants, except devices that are cellular phones;
4. Computer printers; and
5. Printer supplies for computers; printer paper, printer ink.

**“WaterSense Product”** means a product that meets the water efficiency and performance criteria set by the United States Environmental Protection Agency and is authorized to bear the

United States Environmental Protection Agency WaterSense label. Covered products are those listed at <http://www.epa.gov/WaterSense/products/index.html> or successor address. A member state that wishes to exempt “WaterSense Products during a sales tax holiday may:

1. Exempt all WaterSense Products, or
2. Exempt specified WaterSense Products, or
3. Exempt specified classifications as categorized on the WaterSense product listing.