



Volume 17 Number 4

December 2010

State Tax Return

Georgia Joins the Streamlined Sales Tax Governing Board – Should You Consider Amnesty?

[Stephen Harris](#)

Dallas

1.214.969.5277

sgharris@jonesday.com

[Mace Gunter](#)

Atlanta

1.404.581.8256

megunter@jonesday.com

On November 1, 2010, the Streamlined Sales Tax Governing Board unanimously approved Georgia's petition to join the organization. Georgia will join the Streamlined Sales and Use Tax Agreement (SSUTA) as an associate member on January 1, 2011.

Georgia passed legislation in May 2010 to conform the state's sales and use tax laws to the SSUTA. See House Bill 1221, L. 2010, Act 507. The state's membership, however, is contingent on the state's resolving several technological issues by January 1, 2011. Officials from Georgia have promised to satisfy those requirements before the end of the year.

Beginning on January 1, 2011, Georgia will offer the standard streamlined amnesty for uncollected or unpaid sales or use tax required of all SSUTA member states. The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the state. O.C.G.A. § 48-8-76(a)-(b); SSUTA § 402. To qualify, a seller registered under the SSUTA to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state: (i) must not have been registered in the state in the 12-month period preceding the effective date of the state's participation in the SSUTA, (ii) must register within 12 months of the effective date of the state's participation in the SSUTA, (iii) cannot have received any notice of an audit from the state, and (iv) must continue its registration and payment or collection of applicable sales or use taxes for at least 36 months. O.C.G.A. § 48-8-76(a)-(e); SSUTA § 402.

Taxpayers should carefully consider the implications and alternatives of the Georgia amnesty. Certain taxes are covered, others are not. In some cases, a voluntary disclosure agreement (VDA) may be preferred due to the required "strings" that attach to the SSUTA amnesty provisions. For example, tax amnesty applies solely to uncollected sales or use taxes due from a taxpayer in its capacity as a "seller," and not due in its capacity as a consumer or buyer. O.C.G.A. § 48-8-76(f). Thus, tax due on items used or consumed by the seller during the course of its business on which taxes have not been paid (e.g., items withdrawn from inventory) are not available for amnesty. Furthermore, the amnesty program is only available for uncollected "sales or

use” taxes. A variety of state and local transfer and excise taxes do not fall within the ambit of Georgia’s amnesty law. For taxpayers with these types of potential liabilities, a VDA may be the preferable option.

In addition, sellers may have sales to customers in a number of SSUTA states, but lack a significant physical presence in those jurisdictions. In such cases, sellers will have to weigh the benefits of obtaining a tax amnesty against the compliance and administrative burdens imposed by voluntarily registering in each of the 20 full-member states. If, for example, a seller has a significant physical presence only in Georgia, applying for a VDA with the Georgia Department of Revenue may be a more attractive option (*i.e.*, a less expensive option) than being registered in 20 or more states to collect and remit sales and use tax. Furthermore, taxpayers who register under the SSUTA provisions should consider that they will not receive amnesty for sales and use taxes imposed in those full-member states whose 12-month amnesty periods have expired. Thus, the expiration of the amnesty period in the full-member states may counsel against registering under the SSUTA provisions.

With its admission, Georgia becomes the 24th member of the Streamlined Sales Tax Governing Board. Other participating states include 20 full member states (Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming) that have changed their sales tax administration law to conform to all of the requirements set forth in the SSUTA, as well as three associate member states (Ohio, Tennessee, and Utah) that have been determined by the Governing Board to have achieved substantial compliance with the terms of the SSUTA taken as a whole, but not necessarily each provision. Sellers that register under the SSUTA must collect and remit sales and use taxes for all taxable sales into the full member states. SSUTA § 401(B). Sellers may, but are not required to (unless otherwise required to by applicable law), elect to collect sales or use taxes in an associate member state. SSUTA § 801.3(B). Sellers that are registered on the Streamlined Sales Tax registration system can register with Georgia starting on January 1, 2011.



This article is reprinted from the *State Tax Return*, a Jones Day monthly newsletter reporting on recent developments in state and local tax. Requests for a subscription to the *State Tax Return* or permission to reproduce this publication, in whole or in part, or comments and suggestions should be sent to Christa Smith (214.969.5165) in Jones Day’s Dallas Office, 2727 N. Harwood, Dallas, Texas 75201 or StateTaxReturn@jonesday.com.

©Jones Day 2010. All Rights Reserved. No portion of the article may be reproduced or used without express permission. Because of its generality, the information contained herein should not be construed as legal advice on any specific facts and circumstances. The contents are intended for general information purposes only.