

Streamlined Sales Tax Conforming States Committee
Phoenix, Arizona
January 6-7, 2005

The following state delegates participated in the fourth meeting of the Conforming States.
Commissioner Loren Chumley, Tennessee (Co-Chair)

Tom Atchley, Arkansas

Marshall Stranburg, Florida

James Turner, Indiana

Don Cooper, Iowa

Kristi Magill, Iowa

David Corbin, Kansas

Robert Cox, Kentucky

Richard Dobson, Kentucky

Raymond Tangney, Louisiana

Peter Beaulieu, Maine

Dale Vettel, Michigan

Commissioner Dan Salomone, Minnesota

Tom Gillaspie, Nebraska

Anna Mitchell, North Carolina

Andy Sabol, North Carolina

Senator Dwight Cook, North Dakota

Representative David Drovdal, North Dakota

Senator Amstutz, Ohio

Representative Bob Gibbs, Ohio

Fred Nicely, Ohio

Commissioner Jerry Johnson, Oklahoma

Representative Paul Dennert, South Dakota

Representative Orville Smidt, South Dakota

Representative Hal Wick, South Dakota

Scott Peterson, South Dakota

Connie Hardin, Tennessee

Commissioner Bruce Johnson, Utah

Senator Walt Helmick, West Virginia

Delegate John Doyle, West Virginia

Dale Steager, West Virginia

Dan Noble, Wyoming

Welcome

Commissioner Chumley opened the meeting at 1:00 pm. Following the introduction of delegates and other attendees, Ms. Chumley reviewed the meeting agenda and provided a summary of activities at the October meeting of the Conforming States and the November meeting of the Implementing States. She added that a July 1 meeting of the petitioning states is expected and that most of the states have made staff assignments for certification (of certified service providers) and compliance reviews. She added that the

date on which a State posts its certificate of compliance starts the timeline for public comments.

Jerry Johnson asked whether posting was required to the state tax agency website, or to the state's main homepage. Bruce Johnson commented that he has thought that posting would occur on the tax agency web page. No strong opinions were voiced for requiring a link to a state's main website or homepage.

Scott Peterson reported that 11 vendors have submitted responses to the request for proposals from certified service providers.

Rule Drafting, Bylaw Completion and Advisory Councils

Discussion of revision to the Bylaws of the Streamlined Sales Tax Governing Board, Inc, revisions to the Governing Board Rules of Procedures and requirements for Advisory Councils were done jointly, since the issues under discussion relate to all three areas. Discussion occurred primarily at the conceptual level—to provide guidance for revisions prior to the next meeting of the Conforming States.

Bruce Johnson expressed concerns about the public hearing requirement, under Article 7, Section 2 of the bylaws, for any requests for interpretation of the SSUTA. He suggested that summary disposition might be appropriate in some cases as long as the public had adequate notice and a right to provide input. This was followed by discussion of how this is treated in the bylaws and the rules of procedure.

The nature of the recommendations being made by the compliance committee—whether they “certify” compliance with the SSUTA, or make a recommendation and provide details on potential areas of noncompliance was then discussed. The latter views received more support in the discussion and it was suggested that a motion could be developed describing exactly what is expected from the Compliance Committee of the Conforming States.

Following a discussion of the size of the finance committee, Loren Chumley suggested that it have five members.

The discussion then turned to advisory councils (Article 8 of the bylaws) and there was substantial discussion over the degree of autonomy, in terms of being a separate entity or having control over its own bylaws, of the Business and Taxpayer Advisory Council (BATC). Delegate Doyle noted that the SSUTA says that the Governing Board “creates” the advisory councils and that providing autonomy for the BATC would be more consistent with term “recognize.” Jerry Johnson commented that the intention of the SSUTA is that the BATC be a committee under the Agreement. Bruce Johnson commented that a “recognize” approach could result in recognition of multiple business councils. Loren Chumley closed this discussion by directing that a small group—

composed of a business representative, Jerry Johnson, Scott Peterson, and Delegate Doyle would come back to the group with a proposal on this.

Loren Chumley noted that she expects a vote on Article 7 (Standing Committees of the Governing Board) of the bylaws at the next meeting. Representative Drovdal raised a concern about authentication of participants who participate telephonically in meetings. Steve Kranz expressed a preference for public participation via teleconference, and related his concerns with MTC's practice in this area, which is to require members of the public to participate in person.

There was some discussion of Section 901 of the SSUTA, Amendments to the Agreement; and, in particular, whether an amendment should require a second from another State.

Steve Kranz and Kristi Magill commented on their preference for limits to the disclosure of names of BATC members and distribution of streamlined sales tax meeting materials to the public at the same time they are provided to the States.

Loren Chumley noted that bylaw and rule revisions would be completed in the next two weeks.

Centralized Registration

Loren Chumley provided a review of recent developments on the streamlined central registration system, starting with discussion at the August 2004 meeting of the Conforming States and the authorization for a memorandum of understanding (MOU) with the MTC at the October 2004 meeting. As a result of discussions, since the October meeting, with state information systems staff and the MTC, Ms. Chumley presented two recommendations: that a subcommittee of the Conforming States is needed to serve as a project manager for the combined registration effort and that the Conforming States should issue a request for proposals (RFP) for a private vendor to develop and operate the central registration system. She added that the RFP could be available by January 21 and that it was possible to have a contractor selected in March. She acknowledged that there are expenditure constraints for engaging a private vendor and stated that the fallback position is to partner with the MTC--in case an acceptable contract cannot be obtained with a private contractor.

Bruce Johnson, in response to a question from Nebraska on costs incurred to date by the MTC, stated that the MTC does not yet have a position on this. He also noted that if the RFP is unsuccessful, the MTC would assist the Conforming States in developing a system. The delegates should understand, however, that the MTC was not agreeing to step in to develop the system at that time or insure that the Conforming States could develop the system themselves in a timely fashion.

In response to a question on the standards and requirements for the combined registration system, Jerry Johnson commented that the design documents for the system have already been developed by the MTC, and that a contractor would be hired to do the coding for a product that has already been specified.

Senator Cook cited the advantages of working with the MTC that had led to the group's earlier request for their role in development. He added that the MTC should be reimbursed for expenses incurred in the development of the streamlined registration system.

In response to a question from Tom Atchley of Arkansas, about the additional costs of hiring a private vendor, Jerry Johnson stated that there had been sufficient discussion with MTC staff on the cost of its development of the streamlined registration system to serve as a guideline for responding to proposals from private vendors. He also clarified that there are two distinct systems being developed—a traditional combined registration system by the MTC (often referred to as the long path) and the streamlined registration system being sponsored by the conforming States (often referred to as the short path).

The meeting was recessed until Friday morning.

Methodology for Estimating Fiscal Impact from Voluntary System

Lorrie Brown of the Washington Department of Revenue reviewed her methodology for estimating the revenue impact of the amnesty for new registrants under Section 402 of the SSUTA. In response to a question from Kristi Magill, Ms. Brown agreed that a lack of nexus is not necessary for participating in the amnesty, but that this group would not be a substantial component of the amnesty.

Loren Chumley noted that many other factors will affect revenue under the streamlined agreement, including enforcement programs, and affiliate nexus statutes.

In response to additional questions, Ms. Brown confirmed that her estimates are for a voluntary system, focus on business to consumer sales and do not include business to business sales. She noted that while business to business sales are substantial, much of the revenue from sales and use taxes on these transactions is already being collected.

Bob Cox of Kentucky noted other factors that will affect revenue, particularly certified service provider fees applying under Model 1. He cited the potential for migration of existing taxpayers to a model 1 arrangement, which could have a substantial effect on revenues.

Certification Reviews

Scott Peterson and state tax agency representatives then broke off for a separate session on review of certified service providers.

Compliance Reviews

There was a general discussion of compliance reviews, interpretations of the Agreement, the possible need for changes to the SSUTA and associated legislative changes prior to July 1. Dianne Hardt reported that state and business representatives are identifying issues and talking about those where changes to individual state legislation may be needed.

It was recognized, in the discussion, that there may be some threshold issues, such as medical equipment, where an interpretation of the SSUTA is needed prior to July 1. It was noted by Steve Kranz that the white papers developed by and approved by the project and, in some cases, the Implementing States, provides a “legislative history” to the states for guidance in interpretation of the SSUTA. Bruce Johnson urged the group not to hold meetings for each threshold issue, but have the conforming states chairs solicit input via email as these issues come up.

Kristi Magill summed up several of the comments by stating that interpretations of the SSUTA will have to wait until the governing board exists. Jerry Johnson identified two responsibilities for the Compliance Committee—a checklist of state actions for certification and identification of threshold issues for compliance.

Jim Turner asked about the amount of backup information that should be provided with certifications, such as state statutes or streamlined sales tax project issue papers. Loren Chumley responded that providing this type of documentation was overkill, but that responses to public comments or questions on a state’s compliance should be included. Kentucky representatives indicated that they will present their interpretation of the SSUTA, where needed, and document their good faith efforts to comply with the Agreement.

Sourcing Presentation by Ohio

Ohio delegates presented a letter from Governor Taft and Ohio legislative leaders supporting a change in sourcing rules under the SSUTA. The proposal would allow a phase-in period for the shift from origin to destination sourcing for small remote vendors. Those whose sales are under a certain threshold amount for other than “over the counter sales” would qualify for this exemption which would apply to both instate and interstate sales. The Ohio delegates emphasized that this is not a revenue issue for its local jurisdictions, as has been expressed in other states, but a question of the burden, for small businesses, to change their computer systems and business practices to accommodate destination-based sourcing.

Remaining Issues

Loren Chumley reviewed the schedule for the next Conforming States and Project meetings which will be in early March in Atlanta.

Jerry Johnson then proposed four resolutions relating to the streamlined registration system:

- 1) Authorize co-chairs of the Implementing States and the Conforming States to issue a RFP for the development, maintenance and hosting of the streamlined registration system, and, if determined to be in the best interest of the Conforming States, award a contract for such services. This action does not authorize the co-chairs to obligate the Governing Board to [commit] resources not available at the time of such award.
- 2) Authorize co-chairs of the Implementing States and the Conforming States to enter into an agreement with MTC to assist with the development of the streamlined registration system in the event that it is determined that an outside contract for such services is not in the best interests of the Conforming States.
- 3) Rescind motion from the October 7/8 [2004] meeting of the Conforming States which directed the Conforming States to enter into an MOU to develop the central registration system.
- 4) Direct the co-chairs of the Conforming States to create a subcommittee to oversee the development of the streamlined registration system.

Senator Cook asked how these resolutions would relate to any decision on operation of the streamlined registration system by the MTC. Jerry Johnson responded that this decision would have to come back to the Conforming States. Jerry Johnson moved passage of resolutions 1 and 4. This was seconded by Tennessee and passed on a voice vote with a “no” vote from North Dakota.

Jerry Johnson then moved acceptance of resolutions 2 and 3. This was seconded by Tennessee and passed on a voice vote with an abstention from Utah.

Scott Peterson noted that after the initial contract awards for certified service providers, that there will be a certification process over the next six months.

The minutes of the October 2004 meeting of the Conforming States were approved with the correction that Representative Tom Sands of Iowa participated in the meeting.

The meeting was adjourned.

Respectively Submitted

Kenneth R. Beier
Multistate Tax Commission