

Minutes of Sales Tax Simplification Implementing States
November 16, 2004
Chicago, Illinois

The eleventh meeting of the Implementing States was held on November 16, 2004 in Chicago, Illinois. Votes of the Implementing States, reported in these minutes, were by unanimous voice vote unless otherwise indicated.

The following state delegates participated in the meeting.

Alabama

Bettye Griggs, City of Birmingham

Arizona

Christie Comanita, Department of Revenue

Arkansas

Tom Atchley, Department of Finance and Administration
Mary Cameron, Department of Finance and Administration
Karen Hathaway, Bureau of Legislative Research
Martha Hunt, Department of Finance and Administration

California

Larry Bergkamp, Board of Equalization

District of Columbia

Stephen P.B. Kranz, Council on State Taxation

Florida

Marshall Stranburg, Department of Revenue

Illinois

Terry Charlton, Department of Revenue

Indiana

Richard Dobson, Indiana Department of Revenue
Michael Landwer, State Budget Agency

Iowa

Representative Tom Sands
Donald Cooper, Department of Revenue
Rod Erickson, Department of Revenue
Kristine Magill, RSM McGladrey, Inc.

Kansas

Senator David Corbin
Representative Steven Brunk
Joan Wagnon, Secretary of Revenue
Richard Cram, Department of Revenue

Kentucky

Representative Joni Jenkins
Robert Cox, Governor's Office for Economic Analysis
Richard Dobson, Department of Revenue
Charlotte Quarles, Legislative Research Committee

Louisiana

Cynthia Bridges, Secretary, Department of Revenue
Raymond Tangney, Department of Revenue

Maine

Peter Beaulieu, Director, Revenue Services
Stephen Murray, Revenue Services

Massachusetts

Ted Lauper, Department of Revenue
David Helms, Department of Revenue
William Rennie, Retailers Association of Massachusetts

Michigan

Daniel Greenberg, Department of Treasury
Dale Vettel, Department of Treasury

Minnesota

Dan Salomone, Commissioner of Revenue
Cathy Wicks, Department of Revenue
Larry Wilkie, Department of Revenue

Mississippi

Meg Bartlett, State Tax Commission

Missouri

Senator Joan Bray
Carol Fischer, Director, Department of Revenue
Gerry Andert, Department of Revenue

Nebraska

Mary Jane Egr, State Tax Commissioner
Tom Gillaspie, Department of Revenue
Ellen Thompson, Department of Revenue

New Jersey

Harold Fox, Division of Taxation
Craig Rook, Division of Taxation

New York

Michelle A. Cummings, Department of Taxation and Finance
Mary Ellen Ladouceur, Department of Taxation and Finance
Daniel Wood, Department of Taxation and Finance

North Carolina

Anna P. Mitchell, Department of Revenue
Andy Sabol, Department of Revenue

North Dakota

Senator Dwight Cook
Representative David Drovdal
Representative David Weiler
Gary Anderson, Director, Office of State Tax Commissioner
Myles Vosberg, Office of State Tax Commissioner

Ohio

Commissioner William Wilkins
Ed Phillips, Department of Taxation
William Riesenberger, Department of Taxation
Timothy Sachs, Department of Taxation

Oklahoma

Senator Angela Monson
Jerry Johnson, Vice Chairman, Oklahoma Tax Commission
Thomas Kemp, Jr., Chairman, Oklahoma Tax Commission

Rhode Island

Paul McVay, Division of Taxation
John Nugent, Division of Taxation

South Dakota

Senator H. Paul Dennert
Representative Orville Smidt
Scott Peterson, Department of Revenue

Tennessee

Loren Chumley, Commissioner of Revenue
Connie Hardin, Budget Analysis, Tennessee Legislature
Sherry Harrell, Department of Revenue

Texas

Representative Jim Pitts
Robin Corrigan, Comptroller of Public Accounts
William Hamner, Comptroller of Public Accounts
Wayne Pulver, Texas Legislative Budget Board

Utah

R. Bruce Johnson, Commissioner, State Tax Commission
James V. Olsen, Utah Retail Merchants Association
Craig Sandberg, State Tax Commission

Vermont

Michael Wasser, Department of Taxes

Virginia

Senator Emmett Hanger
Mark Haskins, Department of Taxation

Washington

William N. Rice, Acting Director, Department of Revenue
Julie Sexton, Department of Revenue

West Virginia

Senator Walt Helmick
Melissa Lilly, Senate Finance Committee
Dale Steager, Acting Commissioner and General Counsel, Dept. of Tax and Revenue

Wisconsin

Diane L. Hardt, Department of Revenue

Wyoming

Representative Roy Cohee
Dan Noble, Department of Revenue

The following additional individuals attended the meeting:

Ralph Amon, Manager—Excise Tax, The Boeing Company
Patrick Baldwin, Associate Director, Sales & Use Taxes, Kraft Foods Global, Inc.
Ken Beier, Project Manager, Multistate Tax Commission

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Deborah Bierbaum, Director External Tax, Policy, AT & T
Brenda Billings-Middleton, Sales, Use, Excise Tax Supervisor, Quixtar, Inc.
Roxanne Bland, Multistate Tax Commission
Deborah L. Boone, Systems Engineer, Sabrix
Delena Bratton, Fast Enterprises LLC
Katherine M. Breaks, Senior Manager, KPMG LLP
Dennis Brown, VP, State Government Relations, Equipment Leasing Association
Dan Bucks, Executive Director, Multistate Tax Commission
James G. Busby, Jr., Gallagher & Kennedy, P.A.
John Cmelak, Director of Tax Policy, Verizon Wireless
Charles Collins, Vice President, Government Affairs, Taxware
Pamela Cook, State and Local Tax Director, BellSouth Corp.
Steve DelBianco, Executive Director, NetChoice
Harley Duncan, Executive Director, Federation of Tax Administrators
Leah Durner, Senior Manager, KPMG LLP
Dick Eppleman, Director, Government Markets, Vertex
Jane Frankel, Director, Corporate Business Development, Vertex Inc.
Jeffrey Friedman, Sutherland, Asbill & Brennan LLP
Rochelle Fuller, Tax Analyst, Quixtar Inc.
Jennifer Funk, Tax Specialist, DaimlerChrysler Services of North America
Robert Goehring, Audit Manager, City of Kent, Washington
Mindy Greene, Senior Tax Counsel, Viacom Inc.
Susan Haffield, PricewaterhouseCoopers LLP
Ferdinand Hogroian, PricewaterhouseCoopers LLP
Stuart Hoins, VP, Sales & Property Tax, First Data Corporation
Jeffrey L. Hyde, Senior Tax Counsel, G.E. Capital Corporation
Carolyn S. Iafrate, Attorney at Law
Dana Jacklin, Nextel Partners Inc.
Stacey Johnson, President, Iowa Taxpayers Association
Larry Jones, Assistant Executive Director, US Conference of Mayors
Frank G. Julian, Operating VP, Tax Counsel, Federated Department Stores, Inc.
Robert Kattan, Tax Counsel, IBM
David Kautz, Assistant City Manager, City of Round Rock, Texas
Beth Kendzierski, Tax Director, Apria Healthcare, Inc.
Thomas Kimmett, Department of Revenue
Steve Lankford, Manager, Sales Use Compliance/Audit, EDS Corporation
Damien Littlejohn, Senior Auditor, City of Birmingham, Alabama
Sandra Long, Senior Tax Manager, HCA
Kirk Low, Senior Manager, Crowe, Chizek & Company, LLC
Charles P. Maniace, Tax Counsel, Taxware
Ellen Marshall, Marshall & Company
Leonard Martin, City Manager, City of Carrollton, Texas
Richard L. Martin, Director, External Tax Policy, Sprint
Alysoun McLaughlin, Associate Legislative Director, National Association of Counties

Scott Moore, Senior Auditor, Jefferson County, Alabama
Faranak Naghavi, Principal, Ernst & Young LLP
Kathy Neggors, Manager-Sales, Use & Excise Taxes, General Electric Company
Sean Nicholson, Senior Manager, Sales & Use Tax, Target
Stephen Olivier, Manager, Excise Tax Advice, Chevron Texaco Company
Neal Osten, Director, Telecommunications and Interstate Commerce, National
Conference of State Legislatures
Brian A. Perry, Regional Tax Manager, Georgia-Pacific Corporation
Valerie Pfeiffer, Director, External Reporting and Tax, CIT
Rich Prem, Director, Global Indirect Taxes, Amazon.com
Bruce Reid, Director—State Taxes, Microsoft Corporation
Alana Reimer, Tax Accountant, State Farm
Arthur R. Rosen, McDermott, Will & Emery
Bernard Rothman, Senior Vice President, First Data Corporation
Daniel Schibley, News Director, CCH Incorporated
Brenda Sheffer, Accounting Manager, Allergan
Barbara Sickles, Market Analyst, Paychex, Inc.
Janine Smith, Principal Legislative Counsel, National League of Cities
Sandra Sobotka, Tax Director, Accenture
Julie Stakenburg, Director of Sales & Use Tax, Accenture
Mark Stokes, Mayor, City of Carrollton, Texas
Colin Stoner, Director, Tax, Comcast
Joe Thomas, Director of Audit, Connecticut Department of Revenue Services
Dan Thompson, President, Thompson Tax & Associates, LLC
Michael Tobin, Tax Manager, Banta Corporation
Matt Tomalis, Attorney, Federation of Tax Administrators
Warren Townsend, Director, Sales, Use & Excise, Wal-Mart Stores, Inc.
Leroy Van Riper, Consultant, Van Riper Resources
Steve Woo, Reporter, State Tax Notes

Welcome

Co-chair Angel Monson opened the meeting at 8:00 am. This was followed by the introductions of delegates and attendees.

Report of the Conforming States Committee

Conforming States Co-Chair Loren Chumley provided an update on work of the Conforming States Committee. (The PowerPoint presentation used by Ms. Chumley was distributed to the delegates later in the day.) Nineteen states were judged by the co-chairs of the Implementing States as being in compliance with the Streamlined Sales and Use Tax Agreement (SSUTA) and have participated in the conforming states which is working to ensure that the governing board can be up and running when the SSUTA becomes effective.

The Conforming States created committees to provide direction in the following areas:

- Organizational Structure and Management
- Funding Structure
- Technology
- Tax Administration
- Compliance
- Rules and Procedures
- Advisory Councils

The group has also hired Scott Peterson of South Dakota as Interim Director and executed a Memorandum of Understanding with the Federation of Tax Administrators for hosting and institutional support. The group has received initial funding of \$50,000 from both the NCSL and NGA to defray initial overhead expenses.

Loren Chumley then reviewed the requirements for the SSUTA to become effective. It is expected that when 10 states with 20 percent of the population of the sales tax states are found to be in compliance with the SSUTA and Tennessee and Utah legislation become effective on July 1, 2005, that the governing board can be created. The effective date of the SSUTA would then be October 1, 2005.

A request for proposals for certified service providers was issued on November 1, 2004. Loren Chumley reviewed other upcoming events:

December 1, 2004

Each Conforming States names a tax expert for the Compliance Committee who will support review of state petitions for membership.

Each Conforming State names a certification reviewer who will assist in reviewing Certified Service Providers.

January 2005

Several of the states submit their Certificates of Compliance to the Co-Chairs of the Implementing States.

January 3, 2005

Deadline for submission of responses to the RFP for Certified Service Providers. The first cut will be made February 15 and the certification process will continue through August 2005.

March 2005

Compliance Committee will complete review certificates of compliance of six states submitting in January 2005. In addition, other states will submit certificates of compliance

Spring 2005

File Articles of Incorporation.

File applications for 501(c)(6) status with the IRS

May 1 2005

Deadline to file certificate of compliance for consideration at the July 1, 2005 meeting

May 31, 2005

Deadline for written public comment on Certificates of Compliance filed by May 1, 2005.

June 2005

Compliance Committee holds final compliance meetings to review certificates of compliance, public comments and state responses to comments. This will be completed by June 24th.

Compliance Committee makes recommendation on whether each petitioning states is in substantial compliance.

June 30, 2005

Payment of \$20,000 application fee/dues.

July 1, 2005

Meeting of petitioning States who will vote on each state at the conclusion of presentations.

Select nominating committee for slate of governing board's October 1 meeting.

Select search committee for Executive Director.

October 1, 2005

Governing Board meets to approve bylaws, elect executive committee, appoint committees and consider pending certificates of compliance.

In response to a question from Co-Chair Bruce Johnson, Ms. Chumley stated that the Conforming States would approve the Bylaws of the Governing Board. Mr. Johnson added that the Conforming States have discretion to do whatever is necessary to get things underway. In a response to Senator Monson, that the Implementing States should have input on this, Ms. Chumley commented that the Conforming States have asked for input on the Bylaws. Senator Monson also reminded the group that the Implementing States will have an advisory role for a period after the creation of the Governing Board. In response to a comment by Steve Kranz, Ms. Chumley asked that attendees review the set of bylaws in front of them and provide comments by the January meeting of the Conforming States.

Ms. Chumley then reviewed the current proposals for the State and Local Advisory Council and noted the proposal for increased membership from local government organizations. She then reviewed the current language for the Business and Taxpayer Advisory (BAT) Council. Considerable discussion followed on the application of open meeting requirements to the BAT Council. Senator Dwight Cook of North Dakota stated that the BAT Council could be subject to open meeting requirements of the Governing Board rather than those that normally apply to the states. Scott Peterson and others cited the value of having decisions reached in an open process, so that the Governing Board will know who is behind a recommendation. Senator Monson suggested that the Governing Board could maintain a relationship with independent business groups, which would not be under the Governing Board--in addition to the BAT Council.

Loren Chumley and Scott Peterson directed attention to the Governing Board Rules and Procedures. Bruce Johnson noted that these have not been amended to reflect the most recent set of bylaws. In response to a comment from Steve Kranz, Scott Peterson noted that there are two conforming states list—one for delegates and one for interested parties and that conforming states teleconferences are open sessions. Joan Wagnon suggested the inconsistencies between the bylaws and rules be dealt with at the January meeting.

Request for Proposals for Certified Service Providers

Scott Peterson then reviewed events related to the request for proposals (RFP) for Certified Service Providers (CSPs). A non-mandatory pre-proposal teleconference was held on November 15. There were 349 initial responses to the RFP and 11 of those submitted 160 questions for the teleconference. Written responses to those questions and additional ones posed during the teleconference will be made by the week of November 22. Mr. Peterson expects that there will be 10-15 serious proposals that will require review. He added that by August 15, there should be several proposals to submit to the Governing Board for approval. He also mentioned that attention needs to be given to promotion of the CSP service.

In response to a question from Kristi McGill, Mr. Peterson noted that potential contractors were told on November 15 that their proposals can include a customer fee for setup or systems integration work. In response to a question on CSP charges from Senator Cook, Scott indicated that CSP charges may vary, along with other provisions in their contract. Following discussion of fees going to CSPs or retailers, Jerry Johnson noted that information should be provided to the states to ensure that they understand how compensation is to occur. Bruce Johnson added that it is expected that these payments can begin on October 1, 2005.

Streamlined Registration

Scott Peterson then noted developments on the Centralized Registration System. The Conforming States, at the October meet, approved development of an MOU with the MTC on development of the streamlined registration system and created a committee to consider the development and operation of the online registration system. This committee, at its initial meeting, covered the content of the MOU, including the need for development and testing by June 30, 2005. Scott notes that states will need to provide individuals to test the system and will need to accept data from this system for use in their sales tax systems.

Bruce Johnson then thanked Commissioner Chumley and Senator Finan for their work as Co-Chairs of the Conforming States and Scott Peterson for his work in support of this effort.

Following a break, comments were taken on the central registration system. Steve Kranz reiterated COST's concerns with MTC having an operational role in the SSTP and in operation of the streamlined registration system. He added that this concern does not extend to their development of the system. Jeff Friedman of Sutherland, Asbill & Brennan and Jeff Hyde of GE Capital (and COST board member) also expressed their concern over operation of the combined registration system by the MTC, since it has a role in income tax enforcement. Senator Monson responded that there will be an RFP process for operation of the system and emphasized that all of the groups in the room have the same goals—simplification of state and local sales taxes and support of implementation of the SSUTA.

Dan Bucks then noted the role of the MTC in registration service for the states. Since 1990, the MTC has completed 3200 agreements between taxpayers and the states. This includes a large number who were early participants under the streamlined agreement. He added that voluntary disclosure agreements are not shared with the MTC audit program. He added that he expects that the states will prescribe rules for treatment of data by the operator of the streamlined combined registration system. He also described work on a multiple tax centralized registration system that is being developed independently by the MTC from the streamlined system.

Drop Shipments and Amnesty

Scott Peterson and Diane Hardt then reported on progress on drop shipments, prepared food, bundling, sales price, telecommunications definitions, and exemptions. Regarding amnesty provision, Diane noted that it has always been the intention of the project that all sellers can come forward under an amnesty during the first 12 months of the agreement. Steve Kranz of the District of Columbia moved and Kristi McGill of Iowa seconded acceptance of the drop shipment and amnesty papers and directed that any changes to the SSUTA be brought to the Implementing States at its next meeting. This was passed. Diane Hardt also noted that several states may need legislation on treatment of drop shipments, in order to be consistent with the SSUTA. Diane Hardt noted concerns about state conformance with definitions of medical equipment.

Approval of Minutes from November 19, 2003

South Dakota moved approval of the minutes of the November 19, 2003 meeting. This was seconded by Tennessee and passed.

Amendment to Section 702

Bruce Johnson noted the situation where some states, including Utah, will want to petition for membership prior to their effective date. He moved adoption of changes to Section 702 of the SSUTA that would allow for this situation. (See addendum to these minutes for the revised Section 702.) This was seconded by Tennessee and passed. In

response to a comment from Vermont, which has an effective date contingent upon the SSUTA being in effect, it was clarified that these states will not petition for membership until the governing board is created. Bruce Johnson noted that comments from non-petitioning states will still be welcomed at the initial meeting of the governing board. Senator Monson noted that other states will continue to have a role, for six months, through the Implementing States.

Amendment for School Related Supplies

Following lunch, Andy Sabol of North Carolina explained the amendment to the library of definitions in the SSUTA that would apply to the administration of sales tax holidays. He explained that the list is inclusive of items that states include in school supply sales tax holidays. This amendment would allow states to comply with the SSUTA while retaining sales tax holiday exemptions for school supplies. North Carolina moved adoption of the amendment. This was seconded by South Dakota and passed. (See addendum to these minutes for text of the amendment.)

Other Business

Bruce Johnson then mentioned the prospect for a small business carve out for sourcing provisions for county-level taxes in Ohio that was discussed at the October meeting of the Conforming States. Senator Monson cited the ad hoc group, consisting of representatives from Arkansas, Ohio, California, Washington, and other states, that has been addressing this issue. Bruce Johnson suggested the need for a chair of this group, which would be appointment by the Conforming States co-chairs. Marshall Stranburg of Florida volunteered to serve in this role.

Loren Chumley then previewed the meeting schedule. On January 5-7 the SSTP (January 5 and morning of January 6) and the Conforming States (afternoon of January 6 and January 7) will meet in Phoenix. The compliance review teams and the project will meet in March (either during March 1-4 period or late in March). The compliance committee of the Conforming States and the implementing states will meet in May. The Conforming States will probably need to meet at that time as well. The compliance committee will meet again during the June 20-22 period. The Implementing States will meet on July 1. It was noted that the petitioning states must meet at least 60 days prior to October 1, so that it is possible for the Petitioning States to meet after July 1. Joan Wagnon also noted that the headquarters location should be identified in March, prior to filing of articles of incorporation.

The meeting was adjourned at 2:15 pm.

Respectively submitted,

Ken Beier
Multistate Tax Commission

Addendum to Minutes

Amend Section 702: Approval of Initial States

Prior to the effective date of the Agreement, a state that has adopted changes to its statutes, rules, regulations, or other authorities necessary to bring the state into compliance as provided in Section 805, may seek membership by forwarding a petition for membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing States. If some changes have been adopted, but are not yet in effect, the petition for membership shall include the date on which those changes will be effective. A petitioning state shall also provide a copy of its petition for membership and certificate of compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site.

Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. The meeting shall be convened as soon as practicable after receipt of the requisite number of petitions provided in Section 701, but shall not be earlier than the date the relevant statutes, rules, regulations, or other authorities of the requisite number of petitioning states are effective. An affirmative vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.

The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

*Underscoring is not a part of the amendment and is included only for the convenience of the reader in identifying changes to the original language.

Amend Library of Definitions in Appendix C, Part III to add the following sales tax holiday definitions:

PART III

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

Sales Tax Holiday Definitions

“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.

“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, tempora, 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.