

**Minutes of Sales Tax Simplification Governing States  
January 25, 2002  
New Orleans, Louisiana**

**Delegates**

The following state delegates participated in the meeting.

**Arkansas**

Mary Cameron, Department of Finance and Administration

**District of Columbia**

Stephen P.B. Kranz, Committee on State Taxation

William Bowie, Office of Tax and Revenue

**Florida**

Marshall Stranburg, Department of Revenue

**Illinois**

David Vite, Illinois Retail Merchants Association

Tim Bramlet, Taxpayers Federation for Illinois

**Indiana**

James Turner, Department of Revenue

**Kentucky**

Charlotte Quarles, Revenue Cabinet

**Louisiana**

Representative Bryant Hammett

Cynthia Bridges, Secretary, Department of Revenue

Raymond Tangney, Department of Revenue

**Maryland**

Stephen M. Cordi, Deputy Comptroller, Comptroller of Treasury

**Michigan**

Senator Diane Byrum

Senator Joanne Emmons

Representative James Koetje

Representative Nancy Quarles

Donna Donovan, Department of Treasury

Lucille Taylor, Legal Counsel to the Governor

**Minnesota**

Matthew G. Smith, Commissioner, Department of Revenue

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**Nevada**

Pauline Oliver, Department of Taxation

**New Jersey**

Harry Fox, Division of Taxation

**North Carolina**

Charles Collins, Department of Revenue

Sabra Faires, Department of Revenue

**North Dakota**

Gary Anderson, Office of State Tax Commissioner

Senator Dwight Cook

Senator Herb Urlacher

Representative David Drovdal

**Oklahoma**

Jerry Johnson, Member, Tax Commission

Thomas Kemp, Chairman, Tax Commission

**Rhode Island**

Robert Geruso, Division of Taxation

**Tennessee**

Senator William Clabough

Representative Matthew Kisber

Ruth Johnson, Commissioner, Department of Revenue

Jack Kopaid, Assistant Attorney General

**Texas**

Senator Troy Fraser

John Keel, Director, Legislative Budget Board

Billy Hamilton, Deputy Comptroller of Public Accounts

**Utah**

Senator Lyle W. Hillyard

Representative Wayne A. Harper

R. Bruce Johnson, Commissioner, State Tax Commission

James Olsen, Utah Retail Merchants Association

**Wisconsin**

Diane L. Hardt, Department of Revenue

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**Wyoming**

R.M. (Johnnie) Burton, Director, Department of Revenue

**Participants**

The following additional individuals attended the meeting

Jon W. Abolins, Vice President, Tax & Government Affairs, Taxware  
James Arnold, Director of Taxes, ACF Industries, Inc.  
Ken Beier, Project Manager, Multistate Tax Commission  
Deborah Bierbaum, Director, External Tax Policy, AT&T  
Glen Bower, Director, Illinois Department of Revenue  
Katherine M. Breaks, Manager, KPMG LLP  
Jason Brehouse, Executive Policy Specialist, Pennsylvania Department of Revenue  
Terry Charlton, Staff Attorney, Illinois Department of Revenue  
Bruce Christensen, Audit Director, South Dakota Department of Revenue  
Loren Chumley, Director of Audit, Tennessee Department of Revenue  
Frederick Church, Chief Policy Advisor, Ohio Department of Taxation  
John Cmelak, Director, Tax Policy, Verizon Wireless  
Pam Cook, Director, State and Local Tax, BellSouth Corporation  
Jeffrey Coudriet, Finance and Revenue Committee, Council of the District of  
Columbia  
Robert W. Cox, Deputy Executive Director, Kentucky Governor's Office for  
Economic Analysis  
Joseph R. Crosby, Legislative Director, Committee on State Taxation  
Jeff Dale, Policy Specialist, National Conference of State Legislatures  
Amy Eisenstadt, State Tax Counsel, General Electric Company  
Carolyn Elerson, Manager, Property, Sales and Use Tax, BellSouth Corporation  
Dick Eppleman, Director, Government Markets, Vertex, Inc.  
Jane Frankel, Director, Corporate Business Development, Vertex, Inc.  
Trip Funderburk, Vice President, e-Fairness Coalition – The Washington Group  
John Gallagher, Staff Attorney, Louisiana Municipal Association  
Bill Gannon, Tax Analyst, Union Tank Car Company  
Thomas J. Gillaspie, Administrator, Legal Services, Nebraska Department of  
Revenue  
Larry Good, Electronic Commerce Association  
Kristin Goodin, Tax Counsel, Verizon Communications  
Patrick Guerin, Director, Sales, Use & Excise Taxes, General Electric Company  
Ferdinand Hogroian, PricewaterhouseCoopers LLP  
Stuart Hoins, Senior Director, Sales and Property Tax, First Data Corporation  
Jeffrey L. Hyde, Senior Tax Counsel, GE Capital Corporation  
Beth Ann Kendzierski, Tax Director, Apria Healthcare, Inc.  
John Kennedy, Senior Analyst, Texas Taxpayers and Research Association

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Eleanor Kim, Assistant Director of Tax Administration, Texas Comptroller of Public Accounts  
Stephen Lodge, Vice President, Legislative Affairs, National Confectioners Association  
Michael Logan, Manger, Government Affairs, Target Corporation  
Lawrence Makowski, Tax Manager, Wheels, Inc.  
Ellen B. Marshall, Vice President, Patuxent Consulting Group, Inc.  
Richard Martin, Director, Tax Policy, Sprint  
Jerry McWherter, Administrator, LATA  
Paul Mines, General Counsel, Multistate Tax Commission  
Steve Murray, Director, Special Services, Maine Revenue Services  
Gwen Noles, Editor, CCH Inc.  
Stephen Olivier, Manager, Excise Taxes, Chevron  
Neal Osten, Senior Committee Director, National Conference of State Legislatures  
Kristin Power, Director, State Affairs, Grocery Manufacturers of America  
Pete Poynter, Government Affairs, BellSouth Corporation  
Senator Steven J. Rauschenberger, Illinois  
Maureen Riehl, Vice President, National Retail Federation  
Bernard Rothman, Senior Vice President, First Data Corporation  
Daniel Schibley, Senior Writer/Analyst, CCH Incorporated  
Bruce Segall, Vice President, Pitney Bowes  
Frank Shafroth, Director, State-Federal Relations, National Governors' Association  
Doug Sheppard, Reporter, State Tax Notes  
Tremaine Smith, Program Manager, Washington Department of Revenue  
Verenda Smith, Government Affairs Associate, Federation of Tax Administrators  
John Steele, Director, National Soft Drink Association  
Janice Steffes, Legislative Director, Senator Troy Fraser of Texas  
Tom Tallarito, Tax Manager, Don Corporation  
Dirk Thibodeaux, Attorney, Louisiana House of Representatives  
Robert Thompson, Senior Staff Attorney, Oklahoma State Senate  
Matt Tomalis, Research Attorney, Federation of Tax Administrators  
Warren Townsend, Director, Sales/Use/Product Tax, Wal-Mart Stores, Inc.  
Mark West, Administrator, Ascension Parish Sales Tax Authority  
Cathy Wicks, Assistant Director, Minnesota Department of Revenue  
Stephanie Willette, Manager, Accenture  
Graham Williams, Policy Associate, National Conference of State Legislatures  
Daniel Wood, Tax Policy Analyst, New York Department of Taxation and Finance  
Wayne Zakrzewski, Assistant General Counsel – Tax, J. C. Penney Company, Inc.

## **I. Welcome**

Representative Matthew Kisber opened the meeting at 9:15 AM. Delegates (listed above) introduced themselves. The States of Rhode Island and New Jersey were welcomed to the group.

## **II. Old Business**

The minutes from the November 28-29, 2001 meeting were distributed and discussion was deferred until later in the day. The Rules of Procedure for the Streamlined Sales Tax Implementing States, as adopted on November 29, 2001, were distributed. Bruce Johnson explained the one vote per state provision. A correction was made to change Section K to J and to add the language of E(1)(b) to Section J. The Rules of Procedure were passed on a unanimous voice vote. The rules will be issued separately from these minutes.

Representative Kisber emphasized the importance of having private sector state representatives serve as a conduit to the private sector and other public stakeholders--to ensure that there is broad involvement with Implementing States proposals. Frank Shafroth of the National Governors Association gave a brief report on U.S. Senate action on the economic stimulus package.

## **III. Similar Provisions from the SSTP Agreement (approved 1/24/01) and NCSL Agreement (approved 1/27/01)**

The group reviewed the "Streamlined Sales and Use Tax Agreement," which has the common features of the Streamlined Sales Tax Project (SSTP) Agreement and the National Conference of State Legislatures (NCSL) Agreement. The combined agreement will be the starting point for new states. States that have already enacted both the Act and Agreement in their legislatures may have to revise their statutes based upon the provisions in the combined agreement as agreed to by the Governing States. Acceptance of provisions described below was by unanimous vote, unless otherwise indicated. The combined agreement will be issued separately from these minutes.

### Article I Purpose and Principle

Accepted. Bruce Johnson explained that, at the end of the day, the group may not have a complete agreement, but will have a set of articles that can be added to later. He clarified that some items are critical, and should be included.

Article II Definitions

Accepted with correction of a typographical error on line 9. Following the vote, there was discussion of why services are included in Section 214. Bruce Johnson explained that the provisions should apply to services, where they are subject to a sales and use tax. This was followed by discussion of whether to remove the terms “leases” and “rentals” from Section 218. IL made a motion for withdrawal of these terms, but the motion was withdrawn prior to completion of the vote.

Article III Requirements Each State Must Accept to Participate

Each section of this article was considered separately.

*Section 300 Compliance*

Accepted with correction from “Article VIII” to “Article VII.”

*Section 302 State Administration*

Mark West of Ascension Parish, Louisiana cited the conflict of state level administration with the Louisiana Constitution. Others cited the revenue concerns of local governments with state level administration. It was suggested that a state or another authority could create a single level of administration. It was also pointed out that the governing states will make judgments regarding compliance with provisions, and that a single authority, other than the state, could be considered to be in compliance. Bruce Johnson pointed out that one contact per state, for vendors, is critical. Following this discussion, the provision was accepted.

*Section 304 State and Local Tax Bases*

Diane Hardt explained that under both NCSL and STTP versions that locals would have a common tax base. Charles Collins added that there was a five-year phase in for this provision. Senator Hillyard pointed out that in Utah, some sales are taxable at the local level, but not the state level. Bruce Johnson explained that this could be viewed as either a tax base or tax rate issue. Comments were made by Tom Tallarito of the Donlen Corporation that 304b, should be deleted. It was explained that this section was included because sales of motor vehicles are not necessarily sourced according to an origin or destination rule, but to the location where the vehicle is registered. An amendment to replace “unless federal law prohibits the local jurisdictions from taxing a transaction taxed by the State” to “unless otherwise prohibited by federal law” was passed. The section passed on a voice vote with “no” votes from OK & IL.

*Section 306 Seller Registration*

Accepted.

*Section 308 State and Local Levies*

Bruce Johnson explained that this section provides for notification to sellers on changes. Representative Kisber noted that the group would be returning to a discussion of subsection 6. The section was accepted.

*Section 310 Uniform Sourcing Rules*

Diane Hardt explained that the provision provides a hierarchy of factors to consider in sourcing, and provides for an exemption for multiple points of use. She also pointed out that there is a holding place for telecommunications and that this section does not apply to sourcing of telecommunications services. She also noted that motor vehicles and motor homes are exempt from this section.

Senator Rauschenberger explained the importance of a broad agreement that can attract a large number of states and suggested that forcing sourcing rules and one-base questions limit the potential of the streamlined effort. Senator Hillyard countered that the group should not try to accommodate all states—that it is important to move forward with a meaningful agreement supported by a few states. Representative Kisber emphasized the importance of adopting something today—and that if this posed problems for Tennessee, then his state can deal with it. Jerry Johnson of Oklahoma noted that if the group adopts something that accommodates everyone, that it probably hasn't accomplished much. He also reminded the group of an earlier discussion on larger vendor discounts for more complicated states. The section was accepted.

*Section 312 Administration of Exemptions*

Bruce Johnson explained that, under this provision, states would no longer hold vendors liable if they accept an exemption certificate. The section was accepted.

*Section 314 Uniform Tax Returns*

Charles Collins explained that the objective of this provision is to reduce the amount of data that the vendor must provide with the periodic returns. The section was accepted.

*Section 316 Uniform Rules for Remittance of Funds*  
Accepted.

*Section 318 Confidentiality and Privacy Provisions*

Bruce Johnson pointed out that this allows for collection of use tax at the retail level. In addition, it includes restrictions on use of customer information by service providers, for other purposes. The section was accepted.

Article IV Seller Registration

Each section of this article was considered separately.

*Section 400 Seller Participation*

Dianne Hardt explained that this provision prevents the “cherry picking” of states by vendors; that is, they must collect for all participating states. In response to a question on registration by vendors, Charles Collins explained that vendors, even if they are currently registered in all states, would re-register under the streamlined system, and indicate the states in which they are already collecting sales tax. WY moved and AR seconded that this section be accepted. This was passed.

*Section 402 Amnesty for Registrations*

IN moved and NJ seconded that this section be accepted. This was passed.

*Section 404 Method of Remittance*

IL moved and MI seconded that this section be accepted. This was passed.

*Section 406 Registration by an Agent*

Accepted

Article V Provider and System Certification

NJ moved and IN seconded that this article be accepted. This was passed.

Article VI Monetary Allowances for New Technological Models for Sales Tax Collection

Each section of this article was considered separately.

*Section 600 Monetary Allowance Under Model 1*

NC proposed and DC seconded an amendment on voluntary sellers. This was passed. The amended section was accepted.

*Section 602 Monetary Allowance for Model 2 Sellers*

Charles Collins explained that Model 2 sellers maintain a certified system. NC moved and DC seconded an amendment to the definition of voluntary seller. The amended section was accepted.

*Section 604 Monetary Allowance for Model 3 Sellers and All Other Sellers that Are Not Under Models 1 or 2*

NC moved and DC seconded the amendment to the definition of voluntary seller. The amended section was accepted.

Article VII State Entry and Withdrawal

Regarding states that are involved in the project, but not implementing the streamlined agreement, Bruce Johnson envisions an interim period of 18 months or so where these states would still be involved. There was no further discussion of this article.

Article VIII Amendments and Interpretations

Following discussion of voting rules and the nature of issues subject to interpretation, action on this section was deferred.

Article IX Relationship of Agreement to Member States and Persons

TN moved and IN seconded adoption. This was accepted.

Article X Review of Costs and Benefits Associated with the Agreement

It was explained that this article is advisory. MN moved and MI seconded adoption. The article was accepted.

Appendix A, Streamlined Sales and Use Tax Agreement Letter of Intent

The appendix was not discussed.

Bruce Johnson reviewed topics for the March 16 meeting in Dallas, which could include food (including candy and soft drinks), interim governance, permanent governance, and any carry-overs from the current meeting. It was suggested that the meeting start on Friday afternoon, in addition to the Saturday session. The subsequent meeting, to be held April 12-13 in Dearborn, MI will address: rates; caps and thresholds; leasing; the definition of tangible personal property; and, time permitting, medical equipment and drugs.

In response to a request to place all project items on the NCSL website, Bruce Johnson asked that comments on documents go to Neal Osten and Graham Williams of NCSL. He also asked that NCSL staff to send those comments on Governing States issues to delegates 10 days prior to meetings. He added that by getting these items early, the group can make better use of the public comments period. Charles Collins added that the group would have documents on food to the website within two and one-half weeks. A participant stated that the rounding rule may need attention sooner than anticipated. Johnnie Burton noted that there were several definitions from the original agreement that did not appear in the NCSL version, and wondered when the group will address these issues. Jerry Johnson responded that these could be addressed at the time that the food definition is addressed; but questioned why definitions are important. Bruce Johnson suggested that clothing be "taken off the agenda" for the next meeting, since the group may be talking about the need for definitions. He also suggested that some of the

substantive tax base definitions and rounding be moved to April. Charles Collins suggested that telecommunications sourcing and definitional papers be on the agenda for March. Bruce Johnson suggested that Mr. Collins also present his perspective on governance at that meeting. Jerry Johnson stressed the importance of defining compensation. Charles Collins and Bruce Johnson supported this. Charles Collins also noted that the states will gain experience with compensation during implementation of the streamlined system, and that the SSTEP still has to issue another request for proposals for compensation. Bruce Johnson requested that NCSL staff prepare a list of issues for March 16 and, tentatively, for later meetings. A participant suggested Washington, DC as a site for a May meeting.

#### **IV. Review, Public Comment, Discussion and Vote on Proposals Presented in Salt Lake City**

The group then turned its attention to the four issue papers that were presented at the initial meeting in Salt Lake City.

##### **Uniform Bad Debt Rule**

Charles Collins pointed out that the definition is consistent with the Internal Revenue Code definition of bad debts. After discussion of differences between federal and state treatment of bad debts, OK moved and NJ seconded approval of this proposal. It was accepted.

##### **Vending**

Charles Collins cited the variations among the states in treatment of products sold through vending machines and provisions for thresholds, special rates, and tax base. He also noted that the proposal is acceptable to the vending industry and states that the streamlined system has no effect on the tax treatment of vending. Jerry Johnson of Oklahoma proposed a substitution—"That the provisions of this agreement do not apply to vending machines sales and do not restrict the states in choosing how to tax vending machine sales." This was seconded by NC and accepted by the group.

##### **Direct Pay Permits**

Dianne Hardt explained the importance of this issue to the business community. There was considerable discussion of the use of direct pay permits, including Federation of Tax Administrator guidelines, and their prevalence in multistate manufacturing. Charles Collins explained that use of direct pay permits "defer" the tax until the purchaser knows where it will use the property; and that the approach

is consistent with destination-based sourcing. Raymond Tangney stated that direct pay permits work well in Louisiana, and Stephen Oliver of Chevron-Texaco stated that they help to streamline business processes and should also simplify tax administration, including audits. Mr. Oliver added that the FTA model is good, but that it has not been implemented by any states. He also noted that destination is easier to track than alternate approaches to sourcing. IN moved and DC seconded that the project continues its work on this topic. After discussion of withdrawal of the motion, Bruce Johnson stated that he is comfortable with provisions, keeping in mind that the states are not required to issue direct pay permits. The proposal was accepted with a “no” vote from MD.

#### Multiple Points of Use Certificate

It was noted that the Governing States does not need to develop a certificate. Wayne Zakrzewski noted that this would apply to direct mail, which is characterized as either tangible personal property or as a service by various jurisdictions. Bruce Johnson suggested deferral of this to be considered jointly with direct pay permits.

Matt Kisber entertained a motion to pass the November 28-29, 2001 minutes. TN moved and UT seconded acceptance of the minutes. This was passed. The meeting was adjourned at 3:00 PM.

Respectfully Submitted

Ken Beier  
Multistate Tax Commission