

**Minutes of Sales Tax Simplification Implementing States
March 15-16, 2002
Dallas, Texas**

The third meeting of the Implementing States (at prior meetings, the group was sometimes identified as the Governing States) was held on March 15-16, 2002 in Dallas, Texas, immediately following the meeting of the Streamlined Sales Tax Project. Votes of the Implementing States, reported in these minutes, were by unanimous voice vote unless otherwise indicated.

Delegates

The following state delegates participated in the meeting.

Arkansas

Mary Cameron, Department of Finance and Administration

District of Columbia

Stephen P.B. Kranz, Council 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

Cynthia Bridges, Secretary, Department of Revenue

Raymond Tangney, Department of Revenue

Dirk Thibodeaux, Louisiana House of Representatives

Maine

Steve Murray, Maine Revenue Services

Maryland

Stephen M. Cordi, Deputy Comptroller, Comptroller of Treasury

Kevin Hughes, Governor's Office

Minutes of Sales Tax Simplification Implementing States
March 15-16, 2002
Dallas, Texas
Page 2

Michigan

Senator Diane Byrum
Senator JoAnne Emmons
Representative James Koetje
Donna Donovan, Department of Treasury
Nancy M. Taylor, Department of Treasury

Minnesota

Cathy Wicks, Department of Revenue

Nebraska

Mary Jane Egr, State Tax Commissioner, Department of Revenue

Nevada

Dino Di Cianno

New Jersey

Harold Fox, Division of Taxation

North Carolina

Charles Collins, Department of Revenue
Sabra Faires, Department of Revenue

North Dakota

Senator Dwight Cook
Senator Herb Urlacher
Representative David Drovdal
Representative Al Carlson

Oklahoma

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

Rhode Island

Robert Geruso, Division of Taxation

South Dakota

Senator Royal McCracken
Representative Orville Smidt
Gary Viken, Secretary, Department of Revenue

Tennessee

Senator William Clabough
Representative Matthew Kisber
Jack Kopald, Assistant Attorney General

Texas

Representative Dennis Bonnen
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

Wyoming

Daniel Noble, Department of Revenue

Participants

The following additional individuals attended the meeting

Hope Abke, Attorney, Marathon Ashland Petroleum LLC
Jon W. Abolins, Vice President, Tax & Government Affairs, Taxware
Ken Beier, Project Manager, Multistate Tax Commission
Mark Bendick, Tax Manager, Intuit
Deborah Bierbaum, Director, External Tax Policy, AT&T
Glen Bower, Director, Illinois Department of Revenue
William Bowie, Attorney, District of Columbia Office of Tax & Revenue
Paul Boykas, Director, Public Affairs, Pepsi-Cola Company
Katherine M. Breaks, Manager, KPMG LLP
Jason Brehouse, Executive Policy Specialist, Pennsylvania Department of Revenue
Cedric Brown, Senior Auditor, City of Birmingham, Alabama
Dennis Brown, VP, State Government Relations, Equipment Leasing Association
Gene Brown, Economist, Kentucky Governor's Office for Economic Analysis
Dan Bucks, Executive Director, Multistate Tax Commission
Annabelle Canning, Executive Director - Tax Policy, Verizon Wireless
Terry Charlton, Staff Attorney, Illinois Department of Revenue
Nancy Christensen, Executive Director, Minnesota Grocers Association
Loren Chumley, Director of Audit, Tennessee Department of Revenue

Minutes of Sales Tax Simplification Implementing States
March 15-16, 2002
Dallas, Texas
Page 4

Frederick Church, Chief Policy Advisor, Ohio Department of Taxation
David Clark, American Bar Association
Karianne Cole, Sr. Govt. Relations Representative, Albertson's Inc.
Joseph R. Crosby, Legislative Director, Committee on State Taxation
Jeff Dale, Policy Specialist, National Conference of State Legislatures
Donna Donovan, Sr. Legislative Tax Counsel, Michigan Department of Treasury
Harley Duncan, Executive Director, Federation of Tax Administrators
Dennis Egan, Senior Tax Manager, Pepsi Bottling Group
Carolyn Elerson, Manager, Property/Sales&Use Taxes, FedEx Express Corporation
Dick Eppleman, Director, Government Markets, Vertex, Inc.
Aaron Frishman, Policy Associate, National Conference of State Legislatures
Vicki Gibbons, Revenue Tax Specialist, Wisconsin Dept. of Revenue
Thomas J. Gillaspie, Administrator, Legal Services, Nebraska Department of Revenue
Kristin Goodin, Tax Counsel, Verizon Communications
Bettye Griggs, Principal Auditor, City of Birmingham, Alabama
Merl Hackbart, Special Assistant, Kentucky Office of State Budget Director
Stuart Hoins, Senior Director, Sales and Property Tax, First Data Corporation
Felix Jarusewic, Chief of Audit, District of Columbia Office of Tax & Revenue
Eleanor Kim, Assistant Director of Tax Administration, Texas Comptroller of Public Accounts
Chip Kunde, Grocery Manufacturers of America
Joseph Lackey, President, Indiana Grocery/Convenience Store Assn
Hadley Leach, Manager, Andersen
Stephen Lodge, Vice President, Legislative Affairs, National Confectioners Association
Scott Mackey, Kimbell, Sherman & Ellis
Lawrence Makowski, Tax Manager, Wheels, Inc.
Richard Martin, Director, External Tax Policy, Sprint
Barbara McConnell, President, Food Industry Assn. Executives
Michael McDevitt, Director, Dryden Matrix Technologies, LLC
Thomas McMahan, Senior Vice President & Chief Counsel, National Automatic Merchandising Association
Sean Nicholson, Senior Manager, Sales & Use Tax, Target Corp.
Neal Osten, Senior Committee Director, National Conference of State Legislatures
W. Val Oveson, Managing Director, PricewaterhouseCoopers, LLP
Susanne Pagano, Correspondent, BNA
Scott Peterson, Director, Business Tax Division, South Dakota Department of Revenue
Rich Prem, Director, Worldwide Indirect Taxes, Amazon.com
Maureen Riehl, Vice President, National Retail Federation
William Riesenberger, Attorney, Ohio Department of Taxation

Arthur Rosen, McDermott, Will & Emery
Bernard Rothman, Senior Vice President, First Data Corporation
Daniel Schibley, Senior Writer/Analyst, CCH Incorporated
Doug Sheppard, Reporter, State Tax Notes
Edward Sims, Sales Tax Administrator, Morgan County, Alabama
Tremaine Smith, Program Manager, Washington Department of Revenue
Eric Songayllo, Tax Policy Analyst, New York Department of Taxation & Finance
John Steele, Director, National Soft Drink Association
Janice Steffes, Legislative Director, Senator Troy Fraser of Texas
Charlie Sutlive, Manager, State Government Relations, Coca-Cola North America
Ralph Tabor, Associate Legislative Director, National Association of Counties
Elizabeth Tansing, Director, State Government Relations, Food Marketing Institute
Kevin Thompson, Legislative Associate, Council On State Taxation
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.
Myles Vosberg, Sales Tax Compliance Supervisor, North Dakota Office of State Tax
Commissioner
Tom Walls, Chief of Staff, Oklahoma State Senate
Stephanie Willette, Manager, Accenture
Graham Williams, Policy Associate, National Conference of State Legislatures
Lyndon Williams, Tax Counsel, Citigroup Inc.
Wayne Zakrzewski, Assistant General Counsel – Tax, J. C. Penney Company, Inc.

I. Welcome

Commissioner Bruce Johnson opened the meeting at 2:00 PM and welcomed the States of Maine, West Virginia and South Dakota, that have recently enacted streamlined sales tax legislation. It was noted that Washington has passed streamlined legislation that awaits the Governor's signature. Mr. Johnson conveyed an apology and clarification regarding the presentation at the January 26, 2002 meeting in New Orleans on pending Senate vote on federal tax legislation. Some attendees expressed concern about endorsement of the speaker's position at this meeting. He clarified that no endorsement was intended and that the Implementing States is an independent group. In addition, he expressed appreciation for the support of the National Conference of State Legislatures, the Federation of Tax Administrators, and the Multistate Tax Commission, but noted that relationships with these groups do not imply endorsement of these groups or their policies.

Representative Kisber welcomed the three new States and welcomed the opportunity to deal with definitional issues at the meeting. He remarked on the

challenge of coming up with a better system that will be acceptable to Congress. He added that the final product must help the States.

II. Old Business

The minutes from the January 25, 2002 meeting were amended to reflect the attendance of Donna Donovan of Michigan and Robert Geruso of Rhode Island as delegates from their States. The minutes were adopted by a unanimous voice vote.

The amended rules were distributed to the group for their review. Bruce Johnson noted that he had received two letters. The first addresses the clothing definition. A motion was passed that this be forwarded to the Tangible Personal Property group of the Streamlined Sales Tax Project. The second letter addresses delivery charges, which he suggested be included in the current meeting. Mr. Johnson also noted two carry-over items—telecommunications sourcing and privacy.

III. Carry Over Issues (Introduction, Public Comment, Discussion)

Diane Hardt directed the group to the handout on telecommunications sourcing and asked for questions on this issue. Senator Emmons asked if this is the rule that the federal government has required the States to adopt. Ms. Hardt explained that the federal requirement applies to mobile telecommunications sourcing, while the Streamlined Sales Tax Project recommendations apply to all telecommunications sourcing. An Illinois delegate asked how this applies to pre-paid calling cards. Bruce Johnson noted that these are discussed in section 3.d. of the handout. It was further clarified that the location of the equipment that is charged for the call is the basis for sourcing; and that this may not be where the provider sends a bill. Acceptance of the Telecommunications Sourcing rules was moved and seconded. This was passed by the group. Deborah Bierbaum of AT&T thanked the group for passage of the rules.

Sabra Faires cited the Confidentiality and Privacy Protections on page 15 of the Delegate Notebooks and noted that personal identifying information is required only on exempt purchases. Bruce Johnson added that concerns had been expressed that certified service providers would be amassing data on customers; but that the States only want this information where someone is claiming an exemption. A delegate from Utah asked why the language is specific regarding the website of the certified service provider. Ms. Faires responded that this is the logical place for notification, and that certified service providers do not have control over websites of vendors. North Carolina moved and Michigan seconded the adoption of this section. This was passed.

IV. Uniform Definitions

Jerry Johnson of Oklahoma began this discussion by referring to the handout on Uniform Definitions. He emphasized the importance of not providing any flexibility in how these definitions are treated, and emphasized the significance of subcategory definitions. Bruce Johnson added that the definition addresses two concerns—that the participants want to make things simpler, and that they want to provide a level playing field between remote sellers and small, local retailers.

Charles Collins stated that Uniform Definitions are in the Agreement, but do not have to be included in state statutes. He emphasized that the goal of definitions is the determination of taxability. He added that States are required to maintain a database of definitions for determining taxability; and that, hopefully, the States will create a common database. In addition, retailers are held harmless if they rely on these definitions.

A delegate from Louisiana pointed out that legal precedents might control the taxability of certain items, such as software. In Louisiana, courts have decided that software is tangible personal property. Thus, Louisiana can tax software. Sabra Faires suggested that perhaps this discussion is premature. Bruce Johnson added that States, in their definitions, need to have only those definitions that are relevant to their situation. For example, Utah taxes “everything;” thus, it does not have to define food exemptions. Bruce Johnson further explained that this group has not gone down the road of a Uniform Model Act; and that this would have been a huge undertaking. Jerry Johnson restated an earlier comment that this is a “chicken and egg problem”—that it is difficult to discuss a definition if you don’t know how it will be applied. He added that the goal is to give retailers certainty, and to remove some of the obstacles that the States have in adopting uniform language.

Charles Collins noted that he has received little comment from the States or business on administrative definitions, e.g., sales price, and delivery. Bruce Johnson added that Minnesota has a concern about the definition of sales price and whether delivery included postage. He explained that postage is a high portion of the purchase price of direct mail service. The understanding of the project is that if direct mail services are taxable, then the postage is taxable. In response to a question on placing consumer taxes on other taxes, “further up the chain,” such as cigarette or alcohol taxes, Charles Collins explained that a tax is applied to the sales price, which does not include any taxes that appear on an invoice. For example, the “white goods” tax in North Carolina is stated on the invoice and not subject to the North Carolina sales tax.

North Carolina moved the adoption of the administrative definitions. This was seconded by Illinois and passed.

Charles Collins then provided a review of uniform definitions. He emphasized that States generally audit only 1-4% of taxpayers and that providing concise definitions will improve compliance by taxpayers overall. Diane Hardt then proceeded with a review of food definitions. Charles Collins concluded the presentation with a summary of why definitions are needed, the food definition, and the food carve-out definition. He included a comparison of the Streamlined Sales Tax Project definition of food and the U.S. Department of Agriculture (USDA) Food Stamp definition of food (hereafter referred to as the Food Stamp definition). [The Hardt-Collins presentation, *Uniform Definitions, March 2002*, can be found at www.streamlinedsalestax.org.] He emphasized that these definitions give legislatures the policy choices that they need. He recognized that concerns have been expressed by industry about defining carve-outs—their argument is that this creates a target for new taxable items. He countered that the States have already had this choice.

Senator Emmons noted that the Michigan Constitution includes an exemption for food and prescription drugs, but allows taxation of food for immediate consumption. She clarified that "this is something that Michigan cannot change." Charles Collins noted that Ohio has similar constraints and that these situations will be addressed in the preamble to the definitions. He added that these issues will also be discussed at the next Implementing States meeting. Senator Hillyard of Utah noted that States often provide exemptions with the objective of helping people; however, they waste a lot of dollars with these efforts. He suggested that there are probably more effective means of helping low-income households.

Senator Monson of Oklahoma asked if there were other categories discussed as carve-outs. Charlotte Quarles of Kentucky noted the carve-out for candy, where the distinction is products that do not contain flour. John Keel of Texas noted that if food is not defined in the proposal, that it would not be introduced in the Texas legislature. He added, that in Texas, people believe that exemptions for food and medicine make the sales tax more equitable. Senator Clabough of Tennessee brought up the treatment of bottled water as food. Kentucky responded that this was considered a luxury and is taxable, but added that beverages, e.g., Snapple products, are difficult to categorize. Jerry Johnson of Oklahoma concluded the discussion by stating the objective is to be definitive and specific, which differs from the approach of legislation.

The meeting was recessed at 4:55 PM.

Commissioner Bruce Johnson reconvened the meeting at 8:45 AM on Saturday, March 16. He previewed the upcoming Michigan meeting, which will cover rates, holidays, caps and thresholds, governance, leasing, rounding rules, medical equipment, drugs, and clothing. He added that the group was waiting to address governance issues, so that it would not detract from other issues at the current meeting, and so that participants would be better prepared to discuss governance issues in April.

Bruce Johnson then initiated discussion of proxy voting. A delegate who expected to depart prior to the end of the current meeting raised this issue. Senator Emmons of Michigan identified a problem with proxy voting—that someone who has not been involved with discussions will make an uninformed vote. Sabra Faires of North Carolina suggested that the group could allow for voting in advance and noted that the Rules of Procedure allow for electronic voting. Bruce Johnson suggested that the group could allow for written votes by those in attendance at an earlier time for the same meeting. A NE delegate stated that, under their state law, he could designate someone to vote on her behalf. Bruce Johnson commented that he did not think it was a good idea for a State to delegate someone from another State to cast their vote. North Carolina moved and Utah seconded a motion to allow a State to put a vote in writing to be exercised later in the meeting. Discussion ensued on the meaning of this proposal. Bruce Johnson stated his interpretation—that the instructions would have to be for a vote on a specific issue. He added, that if a new issue came up, then the delegate would be silent. North Carolina added that its intention is that the vote be on a specific anticipated issue. Following further discussion on the merits of proxy votes, Bruce Johnson commented that he would like to consider a proposal in writing for discussion in Michigan. North Carolina withdrew its motion.

The group then heard testimony on definitions of food and subcategories of food from representatives of several food industry groups. A brief summary of their oral presentations and related discussion is included in these minutes. Written submittals by these groups are maintained by the National Conference of State Legislatures.

Representative Jeff Elgin, Iowa

Representative Elgin, who stated that he was formerly associated with a bottling company in Iowa, expressed his concern that the effort to define soft drinks was motivated by a desire, by the States, to raise revenue. He added that this definition is not an improvement for state government, and that any definition makes sense only if they can be explained simply to the public. In addition, he questioned

whether the proposed soft drink definition made sense. He also stated that if the group needs to define food, that it should only use the Food Stamp definition. In response to a question from Sabra Faires of North Carolina, Representative Elgin stated that Iowa does tax and defines soft drinks according to carbonization. Several delegates responded to Representative Elgin's testimony. Representative Orville Smidt of South Dakota commented that the purpose of the soft drink definition is not to raise revenues. Senator Emmons of Michigan suggested that the group should look at what this proposal does for business. Senator Monson of Oklahoma added that the intent of the group is not to recommend the tax base or require that certain items to be taxed.

Nancy Christensen, Executive Director, Minnesota Grocers Association

Ms. Christensen expressed a preference for the Food Stamp definition and urged the group not to adopt the proposed definition of prepared food. She suggested that "sale for consumption on the premises" is a better standard for defining prepared food than that proposed by the Implementing States. Ms. Christensen noted controversy and confusion over the prepared food definition that was introduced in Minnesota. She also noted that larger retailers are able to create new entities, so that they do not have to tax prepared food products. Charles Collins of North Carolina urged Ms. Christensen to look at the new definition of prepared food and provide feedback to the group. Harold Fox of NJ noted that the proposed definition of prepared food addresses his concerns. He added that this is a very competitive industry—and that small businesses "really get hit," while larger ones can form new entities to circumvent the definition of prepared food. Cathy Wicks of Minnesota stated that, in her discussions with legislative staff, the four options for prepared food will address 95% of the concerns expressed about the definition. Ms. Christensen commented that part of the response to new definition in Minnesota may be due to retailers not following previous requirements. She added, that "if you tax potato salad, tax it all." Otherwise, she added, you are penalizing small business. Charlotte Quarles of Kentucky asked if restaurant meals in Minnesota are taxed. Ms. Christensen responded that they are. Ms. Quarles went on to ask about the situation where food retailers are more like restaurants and asked if whether you eat on the premises is a good distinction? Ms. Christensen responded that this distinction may not be good tax policy, but that it is a better definition for retailers.

Karianne Cole, Senior Government Relations Representative, Albertson's, Inc.

Ms. Cole reviewed Albertson's long-standing involvement with sales tax simplification efforts, starting with the Northwest Regional Sales Tax Project of the Multistate Tax Commission. She stated that uniform definitions with a menu of

options is the correct way to go, and that ignoring definitional issues would be a mistake. Ms. Cole added that the Food Stamp definition is too simplistic for the streamlined sales tax effort. She added that if the States do not create categories (of products), that many States will have no incentive to join the project. She went on to state that current state laws are onerous for Albertson's and subject the organization to a bizarre array of requirements. Ms. Cole did express her organization's issue with the proposed definition of candy—that the use of flour, as the distinguishing characteristic is a problem. She displayed several candy and non-candy products, including licorice, which contains flour; thus, would not be candy under the proposed definition. She concluded by stating that the development of definitions needs to be an ongoing process.

Senator Emmons of Michigan asked about the online grocery business. Ms. Cole referred to the demise of Webvan, but noted that Safeway and Albertson's have opened ".com" efforts in California, with an expected expansion to northwestern States. Albertson's delivers online purchases, with a charge for delivery. Charlotte Quarles of Kentucky noted that the candy definition may be arbitrary, but asked if Albertson's expected any problems with administering this definition. Ms. Cole noted that Albertson's does not operate in Minnesota (which already uses this definition for candy), and that it does not have a department that reads labels for tax purposes. Thus, it would have to continue to make determinations of taxability on a state-by-state basis. Senator Bill Clabough of Tennessee asked how difficult it would be for Albertson's to use a definition of food that was different from the Food Stamp definition. Ms. Cole responded that her company can "handle these things," but it does not know how expensive it will be. Bruce Johnson rephrased Albertson's position—that they are supportive of the uniform definitions with options for soft drinks and candy, but that it wants to work with the States on the candy definition and other subdefinitions. Ms. Cole confirmed that this statement expresses Albertson's position.

Stephen Lodge, Vice President, Legislative Affairs, National Confectioners Association

Mr. Lodge, who spoke as a representative of the Chocolate Manufacturers Association and National Confectioners Association, stated his group's opposition to retail taxes on candy, noting that it is unfair to tax candy, but not to tax potato chips and donuts. He cited the possible benefits of eating chocolate, and noted that nutrition science is constantly changing. He predicted that States would expand their tax base in response to a uniform definition of candy, even though this is not the intention of the streamlined sales tax project. Mr. Lodge's organizations propose that the States not adopt a common definition of candy, and to let each state define the term. He added that after hearing Charles Collins' presentation on uniform

definitions, that he can support the project definition of food. Mr. Lodge concluded his testimony by stating that his groups do not want to have to fight the streamlined project in every state where it comes up. A delegate from Michigan stated that her state had no intention of taxing candy and added that the industry is asking the group to grandfather the current treatment of candy. Furthermore, she stated that it is not the job of the project to make determinations for 49 States. Mr. Lodge responded by saying that he thinks the project is doing a good job, but that as a retailer and legislator, in addition to representing candy associations, he disagrees on this particular issue. He also noted the cost problems of his industry, which faces high U.S. sugar prices. Jerry Johnson of Oklahoma noted the blanket exemption that was granted to vending machines, and that this may be better than grandfathering existing treatment of products, such as candy. In response to a question from James Olsen of the Utah Retail Merchants Association, Mr. Lodge stated that he did not have a position on the use of flour in the definition of candy. He indicated that this would split his membership. Dave Vite from Illinois stated that his State does not tax candy—that it is treated as food. He further stated that having a definition will make it easier for the retail community to apply sales taxes. He asked Mr. Lodge how this will make it more likely for States to tax candy. Mr. Lodge stated that this makes it a target. Mr. Vite countered a tax on candy has been proposed in about 15 of the past 25 years in the Illinois legislature, but that it has not been adopted. He also noted that Illinois has a tax on tires. This provides a definition to other States, but has not led them to place a tax on tires.

Barbara O'Connell, President, Food Industry Association Executives

Ms. O'Connell explained that her organization represents state grocers associations that have traditionally advocated use of the Food Stamp definition of food. She stated that using a new definition of food could be seen as an attempt to expand the sales tax base, and could introduce a complex set of requirements that increase costs for consumers. She added that differential taxation can “make or break” particular products. Ms. O'Connell pointed out that the purpose of the streamlined effort was to address remote sales, but that remote sales continue to play a small role in food marketing. Jerry Johnson of Oklahoma stated that, after he had received a letter from Ms. O'Connell, he had met with the director of the Oklahoma Grocers Association. The Oklahoma director recognized that having uniform definitions is better than letting the States go their own way. Ms. O'Connell responded that many of her members signed on to the letter following the “Minnesota experience.” Cathy Wicks of Minnesota acknowledged that her state had become a center of controversy on the definition of prepared food. She explained that, under the old law, food prepared on the premises was taxable, in addition to individual servings. In addition, vending machines and vendors at events that charge admission were taxable. Now, however, “prepared food” is that prepared by

the seller. Senator Emmons of Michigan noted that with a Food Stamp definition, the federal definition would have state tax implications. Ms. O'Connell responded that this was a good point. In response to a question by Bruce Johnson, Ms. O'Connell confirmed that her organization is concerned about carveouts, or subcategories, and that they prefer the status quo to the proposed definitions. Bruce Johnson cited Colorado, which, potentially, could have hundreds of definitions of fruit juice and candy. He added that, in light of the Minnesota experience, the group needs to involve the food industry and come up with something that is acceptable. A delegate asked Charles Collins about the frequency of updates to the Food Stamp definition, since it seemed that the project assumed frequent updates. Mr. Collins stated that updates are not frequent, and that the States need to have more flexibility to adjust definitions than is provided by the Food Stamp definition.

Chip Kunde, Grocery Manufacturers of America

Mr. Kunde commended the group for its effort and expressed support for simplification of state sales taxes. He expressed his group's support of the Food Stamp definition, while recognizing the potential difficulties with use of this definition. He went on to suggest that the adoption of definitions by the Implementing States would discourage participation by some States; and that his group suggests that the Implementing States not adopt definitions. Senator Monson inquired as to the nature of the group's problem with definitions—whether it stemmed from clarity of the definition, application of definitions, or with potential loss of exemptions? Mr. Kunde explained that his organization's concern is with the potential misuse of definitions in tax policy.

Representative Kisber then recalled the streamlined project discussions in Savannah about a year and one-half ago. At that time, definitions were taken out of the project and left time for further discussion. In the interim, the project has had time to develop definitions, and the same arguments are now being made—that the group needs to wait for better definitions. He argued that it is hard to have a great deal of sympathy for delay and further industry input until we see some evidence that delays yield improved suggestions and definitions.

Joseph Lackey, President, Indiana Grocery and Convenience Store Association, Inc.

Mr. Lackey explained that his membership includes a broad range of retailers—from national chains to single store operators, and that his members are familiar with the Food Stamp definition. He claimed that, contrary to previous comments, this definition is updated, with the exception of hot foods. He explained that in Indiana, food sold in grocery stores or for home consumption is not taxable. Entities that do not accept food stamps must charge tax. While this may not be fair, it has

worked fairly well. He added that use of the proposed definitions would cause a mess in Indiana, since snacks are currently taxed. He added that the soft drink definition would also cause tremendous change and asked the group to remember that only about one-half of grocers in the U.S. have scanners. Mr. Lackey echoed previous comments that Internet sales are small and not an issue. He concluded by stating that the Food Stamp definition is fine, but that with categories, there is no stopping point.

The National Grocers Association did not make oral comments, noting that others had expressed their position.

John Steele, Director, National Soft Drink Association

Mr. Steele characterized the goal of the Implementing States as getting a green light to tax Internet sales. He noted that soft drink franchisees have geographic territories and are precluded from selling remotely. Mr. Steele stated that, because of this industry sales arrangement, that there are “no tax [transactions] compliance issues [with soft drinks].” He added that his association considers the proposed definitions to be a discriminatory document, and that his industry’s products have a rightful place in “food,” and that they ask to be treated as food. He expressed a preference for the status quo, rather than adoption of the proposed definitions. With the status quo, his group can fight taxes on a state by state basis, such as Texas or FL or MD. Mr. Steele concluded that the taxation of Internet sales does not require a definition of food. In response to a question about the proposed food definition, Mr. Steele said he could accept the proposed definition of food, but not the carveouts.

Warren Townsend, Director of Sales and Use Tax, Wal-Mart Stores, Inc.

Mr. Townsend noted that he has attended all but three of the streamlined project and Implementing States meetings, and cited the thousands of hours of work that went into the proposed definitions. Furthermore, he said, that “all of the parties commenting today had a change to provide input.” He noted that there are gray areas even in the Food Stamp definition, and that it often takes months to get answers from the USDA on a Food Stamp definitional question versus weeks to get a response from a state. Mr. Townsend stated that he sometimes sees disagreements between States and their constituent local governments [on definitional issues] and emphasized the need for bright line definitions, even if the bright line is flour, in the case of candy, or 50% fruit juice for “juice.” He concluded by saying that the group went through a lot to arrive at simplified, common definitions, and that he is surprised when “these people don’t come to the table.” He added that the objective of this effort was not to increase, or limit, the tax base.

Bruce Johnson then asked Charles Collins to clarify the definition before the group. Mr. Collins referred the delegates to the proposed definitions of food, prepared food, candy and soft drinks in their notebooks. He emphasized that these categories are mutually exclusive and moved that they be accepted. This was seconded by WI. Jerry Johnson of Oklahoma stated that he favors moving forward with the definitions. He added that as the group works on preparatory definitions that it might need stylistic changes, and that the group needs to pay particular attention to the experience of Minnesota. He noted that some of the problems that came up were not anticipated, and that the group needs to prevent events that make it appear that it is not working for simplification.

Senator Monson asked for a clarification on whether the group could alter any decisions reached at this meeting. In response, Bruce Johnson stated his understanding—that anything done today can be undone by the same majority vote. He added, that by the time this is implemented, he expects that the rules for change will be more cumbersome. Charles Collins concurred with this opinion. Mr. Johnson further emphasized that “we are not asking States to change their policy.” A delegate from ND asked Charles Collins to comment on the implications for flexibility and sovereignty. He responded that the proposal provides States with the flexibility to make decisions about whether to give special treatment for food or subcategories of food. He acknowledged that the States, by participating in this agreement, are agreeing to give up some of their flexibility, but for the greater good of lessening federal impingement on their sovereignty. Senator Hillyard of Utah commented that the States lost sovereignty with Supreme Court cases and expressed his concerns about special treatment of food. He suggested a three-pronged approach: 1) that food should be taxed, and that there are more effective ways to help people, 2) cut exemptions and lower sales tax rates, and 3) one base per state. He warned that special treatment of food could be used as an argument against the streamlined system, and that it is important to keep this system as simple as possible. Cathy Wicks of Minnesota urged approval of the definitions. She cited the problems in Minnesota with bakery products and some meat products with two or more ingredients. She emphasized that the prepared food definition solves 95% of these problems. Bruce Johnson commented that he had previously argued for no distinction between candy and food. However, since this is too big of a revenue item in the States, he recognizes the needs for a candy definition. He added that the question is where you draw the line for simplification and flexibility. He concluded by stating that “we have drawn the appropriate line and I urge [your] support.”

James Olsen of Utah stated that the definitions should be viewed in terms of how they support the objective of simplification and moved that each definition be considered separately. This was seconded by ND. Senator Emmons of Michigan

started discussion of the motion by stating that all of the definitions were there for a reason, presumably because a State wants to change their statute as little as possible. She added, that “if we throw something out, I don’t know who it hurts, but it hurts someone.” Bruce Johnson concurred that the group should look at the package as a whole. After restatement of the motion by Bruce Johnson, Senator Royal McCracken of SD requested a roll call vote. Three States supported the roll call. A vote on the motion to separate was held with all “no” votes, except for one abstention from Utah.

Representative Harper then moved to amend the soft drink definition to “carbonated and contain natural or artificial sweetener.” ND seconded the motion, and qualified this to be for purposes of discussion. Charlotte Quarles of Kentucky commented that the project decided that carbonization was not a good standard. Jerry Johnson of Oklahoma stated that he was against this amendment, given the amount of work that went into the definition. He added that the group has the flexibility to change the soft drink definition at a future date. Bruce Johnson asked the SSTP to report on carbonization when the Implementing States meets in Michigan. The motion to amend the soft drink definition was then withdrawn. Senator Emmons encouraged anyone who has problems with the definitions to take their comments to the appropriate [Streamlined Sales Tax Project] chairs, and that this includes anything that is problematic or troublesome in a State. Bruce Johnson reinforced this comment by stating that “if we pass things that are a problem in the States, then we haven’t done our job.” A vote was then held on the motion to accept all definitions as a whole. All States voted “yes,” except for one abstention from Utah.

Bruce Johnson then reminded the attendees of upcoming meetings in Michigan and Oklahoma and adjourned the meeting at 2 PM.

Respectfully Submitted

Ken Beier
Multistate Tax Commission