

**Minutes of Sales Tax Simplification Implementing States
July 11-12, 2002
Salt Lake City, Utah**

The seventh meeting of the Implementing States was held on July 11-12, 2002 in Salt Lake City, Utah. 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.

Alabama

Robert Brasfield, Association of County Commissioners
Bettye Griggs, City of Birmingham
Daniel Hardman, Hardman, Guess, Frost & Cummings, PC
Michael Mason, Department of Revenue

Arkansas

Mary Cameron, Department of Finance and Administration

District of Columbia

William Bowie, Office of Tax and Revenue
Jeff Coudriet, Committee on Revenue and Finance
Stephen P.B. Kranz, Council on State Taxation
Hattie Stancil, Office of Tax and Revenue

Florida

Alan Johansen, Senate Finance & Taxation Committee

Illinois

Timothy Bramlet, Taxpayers Federation for Illinois
Dennis Jacknewitz, Jennings, Jacknewitz, and Schrader

Indiana

James Turner, Department of Revenue

Iowa

Carl Castelda, Department of Revenue & Finance
Donald Cooper, Department of Revenue & Finance

Kansas

Richard Clelland, Department of Revenue

Kentucky

Charlotte Quarles, Revenue Cabinet

Louisiana

Christina Fletcher, Department of Revenue

Raymond Tangney, Department of Revenue

Maryland

Delegate Sheila Hixson

Senator Patrick Hogan

Kevin Hughes, Governor's Office

Stephen M. Cordi, Deputy Comptroller, Comptroller of Treasury

Michigan

Senator Dianne Byrum

Senator Joanne Emmons

Donna Donovan, Department of Treasury

Douglas Roberts, State Treasurer

Lucille Taylor, Governor's Office

Minnesota

Jenny Engh, Department of Revenue

Matt Smith, Commissioner

Missouri

Representative Robert Hilgeman

Stephen Davis, House of Representatives

Carol Fischer, Director, Department of Revenue

Ray McCarty, Missouri Chamber of Commerce

Nebraska

Mary Jane Egr, State Tax Commissioner, Department of Revenue

Nevada

Dino Di Cianno, Acting Director, Department of Taxation

New Jersey

Harold Fox, Division of Taxation

North Carolina

Charles Collins, Department of Revenue

Sabra Faires, Department of Revenue

North Dakota

Senator Dwight Cook
Gary Anderson, Office of State Tax Commissioner

Ohio

Fred Church, Department of Taxation
William Riesenberger, Department of Taxation

Oklahoma

Senator Angela Monson
Tony Mastin, Tax Commission

Rhode Island

Robert Geruso, Division of Taxation

South Dakota

Senator H. Paul Dennert
Representative Orville Smidt

Tennessee

Loren Chumley, Department of Revenue
Jack Kopald, 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

Vermont

George Phillips, Department of Taxes

Washington

Will Rice, Acting Director, Department of Revenue
Tremaine Smith, Department of Revenue

West Virginia

Delegate John Doyle

Dale Steager, General Counsel, Department of Tax and Revenue

Wisconsin

Diane L. Hardt, Department of Revenue

Wyoming

Representative Patricia Nagel

Earl Atwood, Director, Department of Revenue

Participants

The following additional individuals attended the meeting.

Jim Arnold, Director of Taxes, ACF Industries, Inc.

Ken Beier, Project Manager, Multistate Tax Commission

Deborah Bierbaum, Director External Tax, AT & T

Katherine M. Breaks, Manager, KPMG LLP

Jason Brehouse, Legislative Director, Pennsylvania Department of Revenue

Dennis Brown, VP, State Government Relations, Equipment Leasing Association

Dan Bucks, Executive Director, Multistate Tax Commission

Terry Charlton, Staff Attorney, Illinois Department of Revenue

John Cmelak, Director of Tax Policy, Verizon Wireless

James Conant, Manager, Sales, Use & Excise Taxes, General Electric

Robert Cox, Deputy Executive Director, Kentucky Governor's Office for Economic
Analysis

Chad Davis, Legislative Associate, National Retail Federation

Harley Duncan, Executive Director, Federation of Tax Administrators

Carolyn Elerson, Manager, Property/Sales&Use Taxes, FedEx Corporation

Dick Eppleman, Director- Government Markets, Vertex

Tom Gillaspie, Administrator, Nebraska Department of Revenue

Valerie Guerrieri, Tax Director, CIT Group

Merl Hackbart, Economist, Kentucky Office of State Budget Director

Susan Haffield, PricewaterhouseCoopers

Sam Haws, Commissioner, Idaho Tax Commission

Jake Hoffman, Idaho State Tax Commission

Jeff Hyde, Senior Tax Counsel, G.E. Capital Corporation

Dan John, Tax Policy Manager, Idaho State Tax Commission

Tom Johnson, Tax Division, City of Phoenix

Frank Julian, Operating VP, Tax Counsel, Federated Department Stores, Inc.

Beth Kendzierski, Tax Director, Apria Healthcare, Inc.

Damien Littlejohn, Senior Auditor, City of Birmingham, Alabama

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Stephen Lodge, Vice President Legislative Affairs, National Confectioners Association
Michael Logan, Manager of Government Affairs, Target Corporation
Sandra Long, Tax Manager, HCA
Larry Makowski, Tax Manager, Wheels, Inc.
Ellen Marshall, Vice President, Patuxent Consulting Group, Inc.
Richard Martin, Director of External Tax, Sprint
Judy Niccum, Revenue Tax Specialist, Minnesota Department of Revenue
Sean Nicholson, Senior Manager, Sales & Use Tax, Target Corporation
Stephen Olivier, Manager, Excise Tax Advice, Chevron Texaco Company
Neal Osten, Senior Committee Director, National Conference of State Legislatures
Val Oveson, PricewaterhouseCoopers
Betty Peterson, Director, Madison County, Alabama Sales Tax Department
Scott Peterson, Director, Business Tax Division, South Dakota Department of Revenue
Robert Polansky, Director, U.S. Tax Research, Taxware
Rich Prem, Director, Worldwide Indirect Taxes, Amazon.com
Maureen Riehl, Vice President, National Retail Federation
Deborah Rigsby, Senior Legislative Counsel, National League of Cities
Arthur Rosen, McDermott, Will & Emory
Bernard Rothman, Senior Vice President, First Data Corporation
Daniel Schibley, Senior Writer/Analyst, CCH Incorporated
Doug Sheppard, Reporter, State Tax Notes
Pam Statler, Sr. Manager, State and Local Tax, Enterprise Rent-A-Car Company
John Steele, Director, NSDA
Janice Steffes, Legislative Director, Senator Troy Fraser
Andrew Wagner, Staff Director, Tax Law, FedEx Corporation
Warren Townsend, Director, Sales, Use, and Product Taxes, Wal-Mart Stores, Inc.
Mark West, Louisiana Association of Tax Administrators
Graham Williams, Policy Specialist, National Conference of State Legislatures
Goeff Wilson, General Counsel, Colorado Municipal League
Wayne Zakrzewski, Assistant General Counsel – Tax, J. C. Penney Company, Inc.

I. Welcome

Co-Chair Bruce Johnson opened the meeting at 10:20 AM and announced that Senator Monson of Oklahoma was serving as Co-Chair for the meeting.

II. Old Business

Taxes Affected by the Agreement

Diane Hardt of Wisconsin reviewed the response of States to a survey of taxes that should be subject to the Uniform Sales and Use Tax Administration Act or the Streamlined Sales and Use Tax Agreement. (The response of the States is described in Section 7 of the meeting notebooks.) She noted that, in their responses, many states mentioned excise taxes on tobacco and insurance premiums taxes. These are not included in the survey results since the project did not intend to include these taxes. She added that the intent of the project is that all sales taxes are subject to the agreement. Bruce Johnson added that States have a choice of whether to include special taxes, such as the municipal energy tax in Utah, in the agreement.

Ms. Hardt then move adoption of the following definition of sales tax and use tax:

Each State will determine and insert the statutory cites of the specific taxes to which the Streamlined Sales and Use Tax Agreement applies.

This was seconded by Alabama and passed.

Customer Remedies for Improperly Collected Tax

Diane Hardt then introduced a proposal for customer refunds procedures that would apply only where the state allows a purchaser to seek a refund of over-collected tax. Subsequent discussion referred to the handout describing the customer refund procedures.

Wayne Zakrzewski of J.C. Penney cited the significant benefits of requiring customers to come to retailers before they can file a class action law suit for refunds. He explained that this provision requires taxpayers to go through a series of steps, or documentation of taxpayer applications for refunds before payments are made under a settlement. He also described his organization's experience with class action law suits.

Richard Prem of Amazon noted the advantages of the customer refund provisions and seller reliance on certified systems. He explained that the common practice of retailers has been, in the presence of ambiguity, to collect the highest possible tax. With this approach, sellers are then “covered” in an audit situation. Deborah Bierbaum of AT&T reminded the group that a goal of the Streamlined Sales Tax Project (SSTP) is to reduce vendor burden, and that dealing with class action lawsuits is a huge burden.

Senator Fraser of Texas noted that passage of the streamlined system will be a formidable challenge and asked whether this provision will generate opposition from the plaintiff’s bar. Ms. Bierbaum and John Cmelak of Verizon Wireless responded that this has not been the case with passage of Mobile Telecommunications Sourcing Act legislation which includes hold harmless provisions for sellers.

Sabra Faires of North Carolina suggested introducing customer refund provisions as a separate piece of legislation. Delegate John Doyle of West Virginia responded that separation may not ease the passage of this provision. A delegate asked if anyone had contacted trial lawyers associations about the customer refund proposal. Senator Emmons of Michigan responded that this was not a good approach.

The discussion of refund procedures was conclude by a request from Bruce Johnson for some further work on the language for the proposals on customer refunds and seller reliance on certified systems.

“Delivered Electronically” and “Load and Leave”

Christina Fletcher of Louisiana explained that these definitions would apply to software. She added the tangible personal property subgroup’s perspective that having a definition would be helpful. Charles Collins of North Carolina noted that these terms—“delivered electronically” and “load and leave” are used in the industry and moved acceptance of the definition. This was seconded by Scott Peterson of South Dakota and passed.

State Administration of Local Taxes

Charles Collins reported that the SSTP had met with local representatives on July 10 and developed a statement of intent that state level administration would not have to be done under the authority of the state Tax Commission or Department of Revenue, i.e., a state could create a separate entity for this purpose. He explained that this would allow for states with local collection authority to participate in the

streamlined system. The statement prescribes that the state level authority carry out all sales and use tax administrative functions, including filing, collection, distribution of funds to appropriate jurisdictions, and audits. In response to a question from Senator Emmons, Mr. Collins stated that he does not think that the proposal would affect governance provisions of the agreement. Bettye Griggs of the City of Birmingham described the statement as a very workable compromise. Acceptance of the statement on State Level Administration was moved by Alabama, seconded by Louisiana and passed.

Direct Pay Permits

Charles Collins explained the importance of this recommendation for the States and taxpayers, and noted that the SSTP passed this recommendation on the morning of July 11. The recommendation calls for States to provide for direct pay authority and recommends use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI Audit and Legal Issues for Tax Administration.

Steve Olivier of Chevron-Texaco explained the importance of direct pay for large companies, and noted that these organizations are already being audited for use tax compliance by the states. He emphasized that adoption of these regulations will “make your job easier.”

The Motion to Provide for Direct Pay Permits was made by Charles Collins of NC, seconded by Steve Kranz of DC and passed.

Placement of Definitions

Sabra Faires explained that Appendix A is a list of defined terms with references to their location in the agreement. The proposed Section 3XX of the Agreement (Uniform Definitions) advises that a State’s use of a term defined in the agreement must be substantially the same as that used in the agreement. Bruce Johnson clarified that definitions used in sales and use tax must be consistent with these definitions. However, the agreement does not apply to other areas of state law, such as environmental regulation.

There was discussion of use-based exemptions and entity-based exemptions. It is expected that use-based exemptions will vary from state to state, but that definitions used in exemptions will be uniform. For example, taxable “food” should be the same as exempted “food.” Bruce Johnson asked if Items 1 & 2 in Section 3XX could be combined. Senator Emmons asked about handling charges. Sabra Faires responded that they are treated the same as delivery charges. No action was taken on this topic.

Governance Provisions

Graham Williams provided an overview of Articles VI-VIII and XII of the Agreement. He explained that once substantial compliance is approved by a meeting of the initial states, that the governing board is established. The proposed threshold for forming the multistate agreement is 10 States with 20% of the population. Senator Hogan of Maryland noted that there are 35 states with 56% of the population participating in SSTIS. Bruce Johnson concluded that there was consensus for a threshold of 10 States with 20% of the population and stated that the last federal census (2000) would be used to measure population.

Senator Emmons emphasized the urgency of getting the agreement finalized—that this will indicate to Congress that we are doing something. John Doyle of West Virginia supported this perspective, but stated that the agreement should not be in effect before May 1, 2003.

In response to discussion of initial applications, Bruce Johnson stated that they would be circulated before a meeting is scheduled. Scott Peterson said that language would be added that applications will go to all of the SSTIS States and the public.

Requirements for new states, which enter under the provisions of Section 700, would be the same as those for the initial states. Bruce Johnson added that there should be something about financial contributions in this section.

Under Section 704, Annual Re-Certification of Member States, it was stated that there would not be annual votes on compliance of the States. Bruce Johnson added that compliance issues can be addressed at any time.

Customer Refund Procedures

The customer refund procedures motion that had been discussed earlier in the day was passed. The meeting was then recessed at 4:45 PM.

III. New Business

The meeting was reconvened at 8:40 AM. The minutes from the June 14-15 meeting in Baltimore were amended to correct the list of attendees, the discussion of prepared foods on page 9, and the discussion of the second state rate on pages 17 and 19. Acceptance of the minutes was moved by NC, seconded by DC and passed.

IV. Review of Draft Interstate Sales Tax Agreement

Senator Emmons made comments on the preamble—that it should include language on the intent of the agreement and pointed out that such language is often important in litigation. Senator Fraser supported this, calling it “our 20-second elevator speech” that will help describe the effort to legislators and legislative staff. He added that this could include an explanation of how the Agreement works with state and federal constitutions. Bruce Johnson suggested that Senators Fraser and Emmons develop this language for the preamble.

Scott Peterson then returned the group to the discussion of governance, and more specifically, compliance of States with the agreement. He recalled the discussion of this topic in Baltimore, and the need to hear the perspective of the delegates on this issue. Senator Emmons suggested that use of certified software will help to keep states in compliance with the agreement. She explained that state requirements must have enough consistency with the official definitions to be work with the software. Jack Kopald of TN noted that all vendors would not be using the software, and that, in addition, the software may not accommodate new products.

Will Rice of Washington emphasized the importance of interpreting “compliance” and stated that the tangible personal property definition approved by SSTIS would require 21 amendments to Washington law. This, he said, is not likely to occur. He suggested a different standard—that a state is in compliance if it is not doing things that are inconsistent with the agreement. Doug Roberts of MI and Senator Fraser supported flexibility in judging compliance with the agreement. Delegates from MO, VT and MI added that expectations of compliance standards must be known in advance—that a state should be able to get a signal as to whether its provisions are acceptable. Senator Hillyard of Utah noted that the uniform state law staff input is helpful on making interpretations in other areas of state law. He added that the perspective of retailers is paramount—that the system must protect “downtown” retailers.

Dan Bucks of the Multistate Tax Commission noted the “legalistic” nature of the discussion on compliance and suggested that substantial compliance be defined in terms of whether variations from the provisions or standards of the Agreement cause an undue burden on a seller’s collection of sales and use taxes. He added that this could be institutionalized with cost of collection measurements. Bruce Johnson noted that, with Mr. Buck’s approach, the State of Washington would be judged on whether it places an undue burden on retailers rather than whether all of its statutes and rules were literally consistent with the Agreement. Charlotte Quarles noted that Kentucky has a similar situation to Washington—that it would need

about 20 changes to have literal consistency with the agreement, but that its definition of retail sales is generally consistent with the Agreement.

Mr. Bucks concluded by stating that the focus and the judgment of the governing board should be to reduce the burden on sellers. This, he said, encourages the board to look at quantitative measures of that burden. He added that companies often have readily identifiable information that tracks their burden, and that legislative fiscal notes often incorporate this type of information. Will Rice supported this “results-based” approach. Sabra Faires noted that the only place where States must use the exact wording from the agreement is with definitions.

Steve Kranz emphasized that there are two “battles” on the compliance front—1) compliance of individual states and 2) acceptance of this proposal on Capitol Hill. He explained that unless you have a strict standard for state compliance that business will argue before Congress that the States have not done their job.

Bruce Johnson summarized the compliance discussion by stating three issues:

- 1) How does substantial compliance relate to specific definitions?
- 2) Is the standard of compliance with each provision or with the agreement as a whole?
- 3) Do we use a measure of burden to evaluate compliance?

Steve Kranz presented language for substantial compliance that was developed with the business community to accommodate concerns about the language in Section 706. Substantial compliance, under this proposal, means that “all elements and provisions of the agreement have been fulfilled.” Bruce Johnson stated his intent—that this motion would provide direction to the drafting committee, which will bring a proposal back to the group for a vote at a later time. Discussion followed on the merits of having strict adherence to all aspects of the Agreement versus demonstration of consistency via a matrix of taxable products. Steve Olivier and Steve Kranz argued that a strictly uniform starting point is important for the success of the project and for gaining support in Congress. Mr. Kranz clarified that there are two areas of compliance—one with use of definitions, which is essential, and the other with provisions of the agreement.

Sabra Faires of NC then introduced a substitute motion,

A state is in compliance with the Agreement if its laws, rules or regulations, and policies are consistent with this Agreement and do not substantially deviate from the requirements set forth in this Agreement.

This was seconded by TN and passed on a roll call vote of 17 (Yes) to 14 (No), with 4 States not voting. The 'Yes' votes were from AR, DC, FL, KY, LA, MD, MN, MO, NE, NC, ND, OH, OK, RI, TN, TX, and WA. The 'No' votes were from AL, IL, IN, IA, KS, MI, NV, NJ, SD, UT, VT, WV, WI, and WY. Not voting were AZ, ME, SC, and VA. Following the vote Senator Emmons commented that such a close vote does not provide good guidance to the drafting committee. Jack Kopald of TN added that the committee should try to come up with an accommodation that is acceptable to more than 17 states. Matt Smith restated the earlier discussion, stating "what I am hearing is that we do not want 'form over substance'."

A motion was then passed that advises the governance committee to work closely with all concerned parties to develop language for Section 706 that is acceptable to all parties.

The group then discussed Section 708 and the makeup of state delegations. The variation of the makeup of the delegations among the states was noted. Bruce Johnson commented that the work of the SSTIS has clearly been enhanced by legislative involvement. Jerry Johnson of OK noted that the person signing or formally representing the state should be from state government. Scott Peterson added that the South Dakota Constitution may not allow a legislative representative to act in an administrative capacity.

Several items were then mentioned that merit further attention. This included the amount of time for implementation (in Section 800), items on state and local tax bases/levies (pages 6 and 10 of the Agreement), the database definition (page 8 of the Agreement), final determinations, which has now been superceded (page 40 of the Agreement), Section 714, Continue Role of Streamlined Sales Tax Project and Government Advisory Council, and the financial structure of the multistate agreement. Bruce Johnson emphasized that he does not want new issues to be raised at the next meeting.

The meeting was reconvened after lunch, with Charles Collins and Senator Hogan serving as co-chairs. Discussion continued on Section 709. Scott Peterson recalled Senator Emmons' suggestion that closed sessions, as described in Section 2, be limited to the reasons listed in Section 1. Mary Jane Egr of NE relayed Iowa's comments that discussions of certified service providers could be open, following their certification, and that dispute resolution procedures could be added to 1)e).

Charles Collins requested the drafting committee to include Senator Emmons' suggestion on closed sessions.

Under Section 710, Withdrawal of Membership, there was discussion of notification procedures (that they should be consistent throughout the agreement), financial obligations for a withdrawing State, and requirements on sellers for collecting sales and use tax once a state has withdrawn. Sabra Faires noted that the language in Article III of the Streamlined Sales and Use Tax Agreement addresses seller obligations in States that withdraw from the Agreement.

On Section 712, Sanction of Member States, Steve Kranz expressed the desirability of sanctions. Dan Bucks suggested that this section could emphasize the joint registration requirement, which is one of the strongest tools for encouraging participation. Richard Prem suggested that this section could also state that vendors can be allowed to cancel their registration in the withdrawing state. Mary Jane Egr mentioned a side issue with Sections 710 and 712—that if a State withdraws, that prorating of payment through the end of the next fiscal period should be considered.

On Section 800, Amendments to Agreement, there was discussion of the notice period. Charles Collins suggested that this be changed to 60 days. There was also discussion of the time period in which states have to comply. Charles Collins suggested that States have one legislative cycle in which to comply with amendments. A Wyoming delegate suggested including language that an amendment “could be brought by any member state.”

Dan Bucks then made comments on Section 802 and the definition of persons who may bring matters before the governing board. He reminded the delegates that under both the SSTP and NCSL Acts, interpretations of state laws must first be made by the member states. If there are inconsistencies in interpretation, then there is a basis for action by the governing board. He expressed concerns about allowing all “persons” to file petitions with the governing board, since there are persons who do not want to see implementation of the streamlined system, and persons who may want to use the governing board to overrule actions of a state, e.g., interrupt an audit being undertaken by a state. He added that the governing body should not have jurisdiction until a state already has made a decision. Mr. Bucks then went on to make additional comments on Article XII.

Other Drafting Issues

Charles Collins stated that Bruce Johnson and Representative Kisber would like for delegates to advise them of any issues they want to bring up at the September meeting. Mr. Collins also asked Diane Hardt to review all SSTIS minutes to determine if the group had resolved all issues raised by the delegates. He also asked that the Project Act and NCSL Act be reviewed to identify any provisions that were not currently included in the draft agreement. In addition, Andy Wagner of Federal Express provided testimony on fuel taxes.

The meeting was adjourned at 3:30 PM.

Respectfully Submitted

Ken Beier
Multistate Tax Commission