
**BEFORE THE ISSUES RESOLUTION COMMITTEE
STREAMLINED SALES TAX GOVERNING BOARD**

IN THE MATTER OF THE
SUBSTANTIAL COMPLIANCE OF THE
STATE OF NEVADA WITH THE
STREAMLINED SALES AND USE TAX
AGREEMENT

DECISION

Appeal No. 2010-1

Presiding:

R. Bruce Johnson, Chair
Erica Mani
Tom Gillaspie
Robert Thompson

Appearances:

For the Business Advisory Council: Fred Nicely
For the State of Nevada: Dino DiCianno, Executive Director,
Nevada Department of Taxation

STATEMENT OF THE CASE

This matter came before the Issues Resolution Committee for a Hearing pursuant to the Section 1002.B. of the Streamlined Sales Tax Agreement (“the Agreement”). On May 12, 2009,- pursuant to a properly listed agenda item, the Compliance Review and Interpretations Committee (CRIC) presented a report to the Governing Board of its annual review of states’ compliance with the Agreement. CRIC did not make a recommendation that Nevada be found out of compliance. A motion was made to find Nevada in compliance with the Agreement. The minutes of the meeting indicate the motion failed with 14 yes votes and 4 no votes. The minutes further indicate that the Executive Director of the Governing Board stated that the motion was an inappropriate motion given that CRIC had not found Nevada out of compliance and that every state was in compliance until found out of compliance. No motion was made to find Nevada out of compliance.

By Petition dated July 13, 2009, Stephen P. Kranz, as President of the Business Advisory Council, filed a Petition for Resolution and Reconsideration of the Governing Board action of not finding Nevada out of compliance with the SSUTA. On August 30, 2009, Scott Peterson, Executive Director of the Governing Board, published the Petition on the Governing Board website and requested public comment as required by Rule 1001.B. A telephonic hearing was held on December 14, 2009. Fred Nicely represented the Business Advisory Council. Dino DiCianno, Executive Director, Nevada Department of Taxation, represented the State of Nevada. No written comments from other parties were received and no oral comments were taken from any other parties.

ISSUE PRESENTED

The BAC alleges that Nevada is not in compliance with the Agreement because “it cannot be confirmed that Nevada allows sellers to remit payments using ACH credit as required by Section 319 of [the Agreement].”¹

APPLICABLE LAW

Section 319 of the Agreement provides, in part, as follows: “Each member state shall: . . . C. Allow for electronic payments by both ACH Credit and ACH Debit.”

Section 805 of the Agreement provides as follows: “A state is in compliance with the Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.”

Section 1002 of the Agreement provides, in part, as follows: Any member state or person may petition the governing board to invoke the issue resolution process to resolve matters of: . . . B. Matters of compliance under Section 805

DISCUSSION

Director DiCianno outlined several methods that Nevada instituted to allow taxpayers to pay their sales and use tax obligation to the state, including ACH debit, e-

¹ The original petition alleged several other grounds for noncompliance which were subsequently withdrawn.

checks, written checks, and wire. He acknowledged, however, that due to funding restrictions beyond the Department's control, Nevada could not provide ACH credit processing at the time of the Governing Board's vote. For the same reasons, it could not provide ACH credit processing at the time of the hearing. See also Director DiCianno's letter to Scott Peterson, dated October 23, 2009, regarding Nevada's 9/24/09 Recertification analysis. Accordingly, we find that Nevada, at all times relevant to this proceeding did not "allow for electronic payments by both ACH Credit and ACH Debit."²

Substantial compliance does not mean exact compliance. It is sufficient under the Agreement that "the effect of all of the state's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement." We believe the "effect" must be the effect on the taxpayers of the state. When this standard was originally debated by the Governing Board, there was significant discussion surrounding the term "substantially." It is clear, for example, that a state may use its own statutory conventions and format in drafting definitions and other provisions of the Agreement, even though the effect of the provisions must be uniform. Stylistic differences generally do not impact a taxpayer nor increase its burden of compliance. Thus, a state may depart from the exact terms of the Agreement if it does not increase the burden on any taxpayer or the burden is *de minimus*.

In this case, however, we believe that Nevada is not substantially compliant with Section 319. The availability of a uniform method for remittance of funds is a significant provision of the Agreement that materially reduces a taxpayer's burden of compliance. Although Nevada will accept the Simplified Electronic Return, a taxpayer must use a different method in paying the tax than it uses for all other member states. This is a burden on the taxpayer. The necessity of using different methods to pay different states was exactly the burden that Section 319 was attempting to eliminate.

It could be argued that Nevada is substantially compliant with Section 319.C. because it meets the ACH Debit requirement and has provided as many reasonable

² We only have jurisdiction to address the Governing Board's determination. Accordingly, Nevada's compliance as of any other date is not before us. We would, however, need to address the issue of mootness if there were any allegations that the relevant facts or law had changed since the vote. We are aware of no such allegations.

alternatives to ACH Credit as are available to it without further legislative appropriations. We reject this contention. Mr. Nicely testified on the reasons that ACH Credit, from a taxpayer's point of view, would be much superior to ACH Debit. He testified that many companies will not authorize the use of ACH Debits because the Company loses control over the disbursement of its funds. With ACH Credit, on the other hand, the Company controls the transfer of the funds. This testimony was not disputed.

The States, in enacting the Agreement, apparently thought the availability of uniform remittance procedures was sufficiently important to make it a specific requirement of the Agreement and to place it prominently in its own section . Mr. Nicely testified on the importance of the provision to the business community in general and BAC in particular. Given these facts, we find that Nevada was not substantially compliant with Section 319 of the Agreement, and that the Governing Board's failure to find Nevada out of compliance with the Agreement was not supported by the relevant facts or Agreement language.

Although the question is not specifically within our jurisdiction, we believe it may be helpful to the Governing Board to comment separately on the issue of possible sanctions. Director DiCianno testified on the various efforts that the Nevada Department of Taxation had made to facilitate remittance of tax by retailers. He also testified that the Department was without the authority to implement ACH Credit without further appropriations from the Legislature. We believe that these factors should be seriously considered by the Governing Board in determining what, if any, sanctions are imposed at this time.

We appreciate the professionalism and candor with which both parties addressed this issue. We especially appreciate their willingness to work together to resolve the other allegations in the petition.

DECISION

We believe that Nevada, at the time of the Governing Board meeting on May 12, 2009, was not substantially compliant with Section 319 of the Agreement, as mandated by Section 805. Pursuant to Article X of the Agreement, and the rules promulgated thereunder, we recommend that the Governing Board find that Nevada is not

substantially compliant with the Agreement, and that it notify the appropriate authorities of Nevada of its decision.

Signed in counterparts on the date indicated.

R. Bruce Johnson
February ___, 2010

Erica Mani
February ___, 2010

Thomas Gillaspie
February ___, 2010

Robert Thompson
February ___, 2010