

Status of Credit for Taxes Paid to Other States Issues (August 2012)

1. What types of taxes are subject to this tax credit provision? **Tentative Agreement**

- Majority of states want to limit this to just the "sales and use taxes subject to the SSUTA."
- BAC wants this to apply to "sales, use and similar taxes that are imposed on the sale or use of a product based on a percentage of the 'sales price' or 'value of use' and not taxes imposed at a fixed amount per unit sold."
- States are hesitant to use "similar taxes" since they don't know for sure what is or is not included in that phrase

Action Needed: Need to define "similar taxes" and BAC and states need to put together list of what is and what is not considered a "similar tax." BAC has recently provided language to explain/describe what is meant by the phrase "similar taxes" and is shown in the Discussion section for Issue 1 of the Credits Issue paper.

Alternative "similar tax" language to consider:

A tax is a "similar tax" if:

- (1) There is both:
 - (a) a tax imposed on the seller or purchaser and either required to be or which may be collected from the purchaser at the time of the sale and
 - (b) a tax required to be paid by the purchaser directly to the state if the seller did not collect the tax at the time of the sale and the purchaser stored, used or otherwise consumed the product in the state;
- (2) the tax is based on a percentage of the sales price or purchase price of the product; and
- (3) credit would be allowed against that tax for a sales or use tax paid in the member state.

May 2012 SLAC Meeting – Agreement was tentatively reached to use the term similar taxes if a list of what is included in the phrase "similar taxes" can be prepared. Fred Nicely and Kathy Negggers will prepare the list of "similar taxes" for non-SSTP states. The credit will cover "sales and use taxes subject to the SSUTA and similar taxes in states that have not adopted the requirements of the SSTP."

July 10, 2012 Teleconference – Fred indicated he thought the BAC was just going to identify the s/u taxes in the 45 states and "similar taxes" would be left up to each state's discretion. Discussed the issue of what happens when a state does not think it is a "similar tax" but a business does? If "similar tax" is going to be used in the amendment, there is a need to identify what is a "similar tax" so states know what they are expected to give credit for. Discussed having the states identify the "similar taxes" in their states. Craig suggested that if the states are going to identify what "similar taxes" exist in their state, the states should only identify those taxes against which a credit would be allowed for a sales or use tax legally due and paid in another state. This will be discussed further in Omaha.

July 18, 2012 Meeting in Omaha – Discussed what are similar taxes and the need to develop a list of taxes that are "similar taxes" if that phrase is going to be included in the amendment. Discussed what types of taxes are "similar taxes" and what types of taxes are not "similar taxes" and went through the examples. Craig to send e-mail to states asking them to self-identify those taxes that would be considered "similar taxes" in their state using the principles described above (i.e., has both a sales tax and a use tax component, the tax is computed based on a percentage of the sales price/purchase price, and credit for a general sales and use tax paid in another state would be allowed as a credit against this tax). Craig also requested that the business community also identify taxes that they believe are "similar taxes" as well. States are not comfortable using the "similar taxes" language without knowing what is included.

2. Should the amendment to the SSUTA relating to credit for taxes paid to other states be limited to the initial "retail sale" or all potential sales and uses? **Agreement**

- Some states want credit to only be required when tax is paid by a purchaser
 - (1) to the seller,
 - (2) directly to the state because the purchaser issued their direct pay permit, and
 - (3) to the first state the purchaser used the product in.

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- States would not be required to allow credit for tax paid to any other states in which the purchaser was required to pay tax on the sale or use of the product, except the first state.
- Some states are OK with allowing credit beyond the initial retail sale.
- BAC wants credit to be allowed for all sales, use, and similar taxes paid by the purchaser.

Action Needed: Discuss whether requiring credit beyond the initial retail sale is beyond the scope of the SSUTA? Is there any point in identifying certain credit related requirements in the SSUTA if those requirements don't even go as far as what is required under federal law and U.S. Supreme Court case law (i.e., *Complete Auto*, *Jefferson Lines*, *Goldberg v. Sweet*, etc.)?

May 2012 SLAC Meeting – Partial agreement was reached to allow credit as described above and also provide credit for tax paid on subsequent uses if that tax is based on the original sales price or purchase price (or depreciated portion thereof) of the product.

July 10, 2012 Teleconference – Mark Nebergall indicated that he felt the BAC members could live with what was considered at the May SLAC meeting which was requiring states to give credit for tax paid in subsequent states if that tax is based on the original sales price or purchase price if states would also give credit if the tax is based on a depreciated portion of the sales price or purchase price as well. No states on the call indicated objection to this suggestion.

July 18, 2012 Meeting in Omaha – Discussed where the workgroup is on this issue based on the July 2012 Teleconference and went through some examples. No state or business people objected to the examples but still aren't sure exactly how this is going to work with leases and rentals. Will address the lease and rental issues when we get there.

3. Should the amendment address tax credits for taxes paid to non-member states? Agreed.

Both states and BAC believe the credit should address tax credits for taxes paid to both member and non-member states.

July 18, 2012 Meeting in Omaha – No one disagreed that the amendment should address taxes paid to both member and nonmember states.

4. Should the credit allowed for tax paid to another state be allowed to differ based on whether one state treats the transaction as a sale of a service and another state treats the same transaction as a sale of tangible personal property (i.e., both states tax the transaction, but one treats the transaction as a sale of a service and the other treats it as a sale of property)? Agreed.

Both the states and the BAC agree that credit should be allowed for the tax paid on the same transaction regardless of whether one state treats the transaction as a sale of TPP and the other state treats the same transaction as the sale of a service.

July 18, 2012 Meeting in Omaha – No one disagreed that credit should be allowed on the same transaction regardless of whether one state treats it as a sale of TPP and another state treats it as a sale of a service.

5. When is a state required to allow a credit against their sales/use tax due for a tax paid (or owed) to another state on a retail sale? (Note: Unique lease/rental issues are addressed separately in Issues 16. to 20.) Tentative Agreement – Need Governing Board direction on this issue.

- The states want the credit to only be allowed if the tax was legally due and paid to the other state. No credit would be allowed for tax that has not been paid to the other state or for tax that was not legally due to the other state, even if the purchaser can't get that tax back from the state to which it was paid in error.
- The BAC wants the credit to be allowed even if the tax is due on a future payment but has not yet been paid to the other state and also wants the credit to be allowed if the tax was paid erroneously to the other state if the purchaser cannot get the tax back from the state to which it was erroneously paid.

Action Needed: Decision as to whether or not states are required to grant credit if the tax was not legally due but was paid and purchaser can no longer get that tax back from state they originally paid it to and how should credits for taxes that are not due until a later date be handled?

May 2012 SLAC Meeting – Tentative agreement was reached to allow credit only in those situations where the tax was legally due and paid. Credit will not be allowed for a tax that was not legally due and paid, regardless of whether the purchaser can get the tax back from the state to which it was paid incorrectly. In addition, if tax has been accrued but not yet paid, credit does not have to be given. However, once the tax is paid, the priority rules will be used to determine which state is entitled to the tax and the state that originally did not give credit may have to give credit or issue a refund under these rules.

July 2012 Teleconference – The BAC still has some concerns about states not providing credit in situations where the purchaser is an "innocent purchaser" and did not know they had paid the tax in error and now cannot get the tax back from the seller or state in which the tax was paid in error. The states on the call still felt they should not be required to provide credit in those situations.

July 18, 2012 Meeting in Omaha – The legally due and paid principles are generally agreed to. However, the business community is still concerned with the "innocent purchaser" scenario discussed on the July 2012 SLAC Teleconference. Business community also inquired about a "presumption that the business correctly paid the tax" principle being followed. Concerns were raised by that states if this presumption was made about what evidence the state must obtain to overcome this presumption. No states appeared interested in requiring states to follow this presumption. It was also discussed how the business community has to take some responsibility in making sure the proper tax is paid to the proper jurisdiction(s). The amendment will be initially drafted using the "legally due and paid" principle.

August 2012 Teleconferences – During various teleconferences in August 2012 that were related primarily to lease and rental transactions, it became evident that the business community and some states felt that if a seller properly sources a transaction under the SSUTA sourcing hierarchy and collects a state's tax based on those sourcing rules, the tax paid by the purchaser to the seller would be considered to have been legally due. Other states felt that even if the seller had properly sourced the transaction using the SSUTA sourcing hierarchy and collected the tax based on those rules, if the transaction did not actually take place in that state, a different state in which the product is stored, used, or consumed by the purchaser would not have to give credit for the tax the purchaser had paid to the seller. A common situation where this may occur is with software that is downloaded from the Internet. Based on the discussions and the different interpretations and the inability of the workgroup to come to agreement on this issue, it was decided that this issue should be vetted at the next SLAC and GB meeting in Salt Lake City to get everyone on the same page. Additional documents have been prepared laying out the fact pattern, questions to be answered and possible answers for discussion in Salt Lake City. It is anticipated that the GB will provide direction on this issue.

6. **Against what types of taxes must this credit be allowed (i.e., can a state deny providing credit for tax paid to another state because the state is imposing its tax on the purchaser as a "sales tax" rather than a "use tax")? Partial Agreement Full agreement if leases and rentals and transactions which required continued payments (maintenance contracts) are set aside for now)**

- Some states believe the credit should be required to be granted against "sales, use, and similar taxes covered by the SSUTA" while other states believe the credit should be granted only against its "use" tax.
- The BAC believes states should have to grant the credit against "all sales, use, and similar taxes that it imposes on the purchaser for storing, using, consuming or otherwise receiving benefit of the product in their state."

Action Needed: Should states be required to grant credit for taxes paid to other states on the same transaction against both their sales tax and their use tax? Could there be constitutional issues if the states do not grant credit against both their sales and use tax?

May 2012 SLAC Meeting – It was generally agreed that regardless of what a state calls the tax it is imposing on a purchaser (i.e., sales or use) because the purchaser stores, uses, or consumes the product in the state, that state should have to allow credit for the sales or use tax the purchaser was previously required to pay in the other state where it purchased the product. Concern still exists on how states should treat transactions that require

subsequent payments (i.e., maintenance contracts, leases and rentals, etc.) when more than one state believes the payment should be sourced to their state. Some states indicated that they do not give credit against their sales tax for a tax paid to another state.

July 2012 Teleconference – This issue is agreed if lease and rental transactions and transactions which required continued payments (maintenance contracts) are set aside. If those types of transactions are included, then some states still have a concern because they do not provide a credit against their "sales tax" for tax paid by a purchaser in another state. They only provide credit against their use tax. This issue will have to be addressed further when lease and rental transactions and transactions that require subsequent payments are discussed.

July 18, 2012 Meeting in Omaha – This issue continues to be agreed. A question was raised about whether this issue addresses situations in which one state treats the transaction as the sale of a nontaxable service and requires the service provider to pay sales or use tax on the TPP they use in providing the service but another state taxes the transaction as the sale of a taxable service. It was explained that the "long" Credits Issue paper discusses this and it was agreed that the credit provision is not meant to address credits related to the "inputs" purchased by the service provider since those were purchased in a different transaction.

7. What "priority" rules (initial sourcing and subsequent use) should be used to determine which state gets the tax and which state must provide credit for the tax paid to another state(s)? Tentative Agreement – but unresolved issue.

Both the states and the BAC agree that the priority rules for the initial imposition of the sales/use tax collected on or at the time of the retail sale of a product in a member state is based solely on the sourcing rules provided under the Agreement. The priority rule for credit for tax paid to another state on (1) the retail sale of products not covered by the Agreement, (2) retail sales made in non-member states, and (3) subsequent uses of a product should be based on which state was first (legally) in time to impose its tax on the retail sale of the product and then based on where the subsequent use of the product occurred.

- The **unresolved issue** relates to states (non-member) that may use origin sourcing for services and also cloud computing type transactions (Mark N to provide examples) because in these scenarios, it would be possible for 2 states (a member state that uses destination-based sourcing hierarchy and a non-member state that uses origin sourcing rules for services) to both claim the tax was first due in their state.

May 2012 SLAC Meeting – It was generally agreed that for transactions between member states the sourcing rules provided in the SSUTA would be used to determine which state had priority in imposing its tax on the initial retail sale. It was also agreed that in determining which state had priority in imposing its tax on the retail sale of products not covered under the SSUTA, retail sales made in non-member states and subsequent uses of a product, the priority would be determined based on which state could first in time (chronological order) legally impose its tax and then based on where any subsequent use of the product took place. Some states still felt that the SSUTA should not address subsequent uses of the product and whether a state had to give credit, but other states felt that this should also be covered to provide clear direction for the states and businesses. Concerns were also raised in determining which state has priority in imposing its tax with regard to transactions which one state may treat as the sale of TPP (and impose its tax based on when possession transferred) while another state may treat the transaction as the sale of a service (and impose its tax based on when first use can be made). This may come up in the cloud computing/remote access to prewritten computer software arena, which is being addressed by a separate workgroup.

July 2012 Teleconference – The issue of determining who has priority to tax a transaction when one state treats as a sale of TPP and another state treats as a sale of a service still remains and needs to be addressed.

July 18, 2012 Meeting in Omaha – With the exception of transactions which could be initially sourced to more than one state, it appears that there is agreement on using the sourcing rules under the SSUTA for determining which state has priority to impose its tax when member states are involved in the transaction. For transactions involving non-member states, there appears to be agreement that the priority should be based on which state is first in time chronologically to impose its tax. For those transactions which may be initially sourced to more than one state at the same time, there is really no way to decide which state has priority over another, other than just adding a provision to indicate that a state which taxes a transaction as a service automatically has priority over a state that treats the same transaction as a sale of TPP (or vice-versa). This will require further discussion.

8. **“Sales price” can include delivery charges and other optional items – must a subsequent state that does not impose its tax on certain charges still give credit for the entire amount of tax paid to other state(s)?** **Agreed.**

- The states are split on this issue. Some states felt that the crediting state should have to give credit against the entire "sales price" or "purchase price" upon which the tax was paid or imposed. Other states felt that that crediting state should only have to give credit for the portion of the "sales price" or "purchase price" based on the items the crediting state would include in its definition of "sales price" or "purchase price."
- Members of the business community indicated that the credit should only have to be allowed for the tax paid on the retail sale based on how the crediting state defines "sales price."

Action Needed: Does the GB believe credit should be granted based on the amount of tax that was paid, regardless of what was included in the measure?

May 2012 SLAC Meeting – It was generally agreed that if a crediting state does not include in its definition of sales price or purchase price items such as delivery charges, the crediting state would not be required to give credit for tax the purchaser paid in another state on that portion of the sales price or purchase price related to delivery charges, if the delivery charges are separately stated on the invoice given to the purchaser.

July 2012 Teleconference – The principle explained above in the May 2012 SLAC meeting is still agreed to. It was recommended that language be considered to indicate that the crediting state impose its tax based on the rate differential (difference between tax rate in crediting state versus state in which tax was already paid) times the measure the crediting state would impose tax on. This will be discussed further in Omaha.

July 18, 2012 Meeting in Omaha – This issue was explained and continues to be agreed. Examples were prepared and discussed so that everyone would understand how the credit provision would apply to these types of situations. Three options were given to illustrate how credit could be computed on these types of transactions. After going through the examples, it was agreed that for these types of transactions, the crediting should give credit for the tax paid in the other state based on the measure upon which the crediting state imposes its tax (Option 2 in the Examples). The examples all assumed that the seller had separately stated the delivery charges. Discussion was held on how transactions such as this should be treated if the delivery charges are not separately stated. It was generally agreed that if the delivery charges are not separately stated, credit would have to be given for the full measure upon which tax was paid in the other state.

9. **If a state into which property is moved does not impose tax on an item such as repair labor, but the state in which the purchase was originally made does impose tax on repair labor, must the state into which the property was moved give credit for the tax paid on the labor?** **Agreed.**

- The states are split on this issue. Some of the states participating in the workgroup indicated that they would provide credit for both the parts and labor. Other states indicated they would only allow credit for the parts and not the labor since their state does not impose tax on the labor and they did not believe they should have to give credit for tax paid in another state for a product (labor) they do not tax in their state.
- The BAC does not believe that a state which does not impose tax on labor should be required to give credit for the tax paid on labor in another state.

Action Needed: Do the states think credit should be required to be granted for the tax paid on labor in another state if their state does not impose tax on labor?

May 2012 SLAC Meeting – It was generally agreed that if a crediting state does not impose its tax on repair labor but does impose its tax on repair parts, the crediting state would not be required to allow a credit against the tax due on the repair parts in their state for the tax paid on the repair labor in the other state as long as the charge for the repair labor is separately stated on the invoice provided to the purchaser. If the invoice has one combined charge for parts and labor, the crediting state can impose its tax on the entire charge, but would also have to give credit against the tax due for all of the tax paid in the other state on the combined charge.

July 2012 Teleconference – Same as #8 above.

July 18, 2012 Meeting in Omaha – This issue was decided consistent with the decision made in #8 above. There was also discussion on how the bundled transaction rules might apply to these types of transactions. It was suggested that if a seller treats a transaction as a bundled transaction and imposes tax on the entire sales price, the crediting state would have to give credit for the entire measure upon which tax was imposed. If the seller only taxes a portion of the transaction because they can identify by their books and records the portion of the transaction that is not subject to tax, then the crediting state only has to give credit for the tax paid on the portion of the transaction that was taxed against that same measure in their state. If more of the transaction is taxable in the crediting state, the crediting state would be owed tax on the portion of the transaction that was not taxed in the other state. No disagreements were raised concerning this treatment.

10. How can a purchaser audited using statistical sampling prove to another state that the purchaser paid sales/use tax on a transaction that was part of the audit population? **Agreed.**

- The states prefer that any proposed amendment not address this issue and that it be left up to each state to decide.
- The BAC believes that if a purchaser is audited and can show that the transaction at issue was included in the population sampled, states should have to consider tax paid on this transaction and grant credit for that tax paid.

May 2012 SLAC Meeting – It was agreed that the amendment to the SSUTA would not contain a requirement that states provide a credit for tax paid to another state based on a sample that was conducted in the other state. However, it was also agreed that a "best practices" comment be added to the "credits" paper to indicate that the state from whom the credit is being requested should not automatically reject giving credit for the tax that may have been paid based on a sample that was conducted, but instead should evaluate the facts and circumstances and then make a determination as to whether or not credit for that tax should be allowed.

July 18, 2012 Meeting in Omaha – No change was made from the May 2012 SLAC Meeting described above on this issue.

11. Can a state with no local jurisdictions deny/limit credit for taxes paid to other states' local tax jurisdictions? **Tentative Agreement.**

- The states are split on this issue. Some states do not want to have to allow credit for local taxes if their state does not impose any local taxes. Other states believe that all member states should have to give credit for any state and/or local taxes paid to another state.
- Some states credit state tax against state tax and local tax against local tax – should this be allowed?
- The BAC believes that all member states should have to give credit for any state and/or local taxes paid to another state.

Action Needed: Must credit be given for the total state and local taxes paid to other states? Can states limit the credit to state tax paid against state tax owed and local tax paid against local tax owed, or must the tax paid to the other state be considered in the aggregate (regardless of its state and/or local tax components) and a credit granted for that entire amount?

May 2012 SLAC Meeting – All of the states are not in agreement on this issue. However, the majority of the states indicated that they believed that states should have to give credit for both state and local taxes paid in another state, regardless of whether the crediting state imposes any local taxes. IN indicated that for consistency purposes, they felt that if a state without a local tax had to give credit for local taxes paid in another state, then a state that does not tax labor, delivery charges, etc., should have to give credit for the taxes paid on those items in the other state as well.

July 2012 Teleconference – There is tentative agreement on this issue. However discussion still needs to take place on whether states can allow credit on a state tax against state tax or local tax against local tax basis. If this is going to be permitted, then a state with no local tax can say they are giving credit for the local tax paid in the

other state against the local tax paid in their state and since no local tax is due in their state, in reality no credit is received. This will be discussed further at the Omaha meeting and examples will be provided.

July 18, 2012 Meeting in Omaha – Most of the states and the business community believe that credit should be allowed for both the state and local taxes paid in another state. The states that do not impose a local tax do not believe they should have to give credit for the local tax paid in another state. There was also discussion that several states give credit on a state tax against state tax and local tax against local tax basis and whether this should be allowed. The states that do not impose a local tax could claim they are giving credit in a state tax against state tax and local tax against local tax manner if this is allowed. The result would be that the states with no local taxes would be OK since they are giving credit for local taxes paid in the other state against their local taxes (\$0). The business community does not agree with this approach and believes a crediting state should look at the total combined state and local tax paid to the other state and give credit for that tax against the combined state and local tax due in the crediting state. A discussion surrounding the constitutionality of not giving credit for the local taxes paid to another state took place. Fred Nicely and Mike Bailey will take a look at this issue and report back at the next meeting. They will look at the constitutionality issue as well as other issues they believe are relevant.

12. For states that give credit for both the state and local taxes paid to another state, should a state with local jurisdictions be required to allocate the state and local portions of the tax credit in a certain manner? **Generally Agreed**

- The states believe that how the credit for taxes paid to other states should be allocated between the state and local taxes due in their state should be left up to each state.
- The BAC just wants to make sure that there is not an undue burden placed on the purchaser who paid the tax and having to keep track of whether the tax they paid in the other state was a state tax or a local tax.
- BAC may be receptive to states using different allocation methods as long as it is clearly indicated on the taxability matrix where an explanation of the allocation method can be found.

Action Needed: Can states require whatever allocation method they want or does a uniform allocation method need to be developed? Discussion of concern raised by BAC on purchaser not having to keep track of whether the tax paid in the other state is a state tax or a local tax.

May 2012 SLAC Meeting – It was generally agreed that each state can determine how it wants to allocate the tax paid to another state between the state and local taxes due in their state. However, the business community members expressed their concerns that although they were OK with the states doing it differently, they did not want to have to track how much state tax versus local tax was paid to the other state. Instead, they wanted to be able to say we paid a total of x% of tax (state and local) in the other state and we owe your state and local governments y%. Therefore the difference (y% - x%) is what we owe in your state – now just tell us how you want us to allocate that difference between the state and local units of government in your state.

July 2102 Teleconference – No changes from May 2012 SLAC meeting as described above. Examples to be discussed in Omaha.

July 18, 2012 Meeting in Omaha – The business community indicated that they agree that each state should be able to determine how they want to allocate the state and local taxes paid in one state against the state and local taxes due in another state. However, they felt strongly that a business should not have to determine whether the tax paid in one state was a state tax versus or local tax for purposes of determining how the credit is computed in another state. They also have some concerns on the possibility that every state would have a different allocation method and would hope that most states do it in the same manner. The examples were discussed and with the exception of those states that provide credit on a state tax against state tax and local tax against local tax basis, no objections were raised to the examples and conclusions reached.

13. Can a state deny credit for tax paid to another state when the advertising and promotional direct mail is sourced pursuant to Section 313.A.4. of the SSUTA? **Tentatively Agreed.**

- The states appear to be split on this issue. Some states believe that a state should not have to provide that credit based on Section 313.A.4 of the SSUTA. This is based on the rewrite of the direct mail rules that took 2+ years of debate to resolve. Other states don't care since they give credit for this tax paid.
- The BAC believes that credit should be allowed and that it may be unconstitutional to not allow the credit.
- If credit must be allowed, then Section 313.A.4. needs to be amended. Otherwise there will be conflicting language in the SSUTA.

Action Needed: Should Section 313A.4 of the SSUTA be identified as an exception to when credit for taxes paid to other states must be allowed?

May 2012 SLAC Meeting – A very brief discussion took place on this issue and it was explained that this issue was addressed after a couple of years work on the direct mail issues and this workgroup was not going to re-open that issue at this time. If someone does not like the provisions contained in the SSUTA related to this issue, they can suggest an amendment specifically related to that provision.

July 2012 Teleconference – BAC raised the question whether or not this was constitutional. Craig indicated that if someone wants to change this position, they should draft an amendment to Section 313.A.4 of the SSUTA since this issue was discussed extensively before section 313 was adopted.

July 18, 2012 Meeting in Omaha – No change from the July 2012 Teleconference. Business community indicated they still felt they had the right to challenge states that do not give credit on this based on constitutional issues.

14. Can a state provide credits that are more generous than what is required by the SSUTA? Agreed.

Both the states and the BAC agree that if a state wants to allow credits that are more generous than what is required under the SSUTA, that should be left to each state's discretion.

15. Can a state deny credit for tax paid to a state (including local tax jurisdictions) if that state does not provide the same (reciprocal) credit? Not Agreed.

- The states do not believe that a state should be required to give credit for tax paid in another state if that other state does not give credit for their state's tax.
- The BAC believes that member states should have to give credit for tax paid to another state regardless of whether that other state gives credit for their state's tax.

Action Needed: If the BAC recommendation is supported, doesn't this put member states at a disadvantage as compared to non-member states?

May 2012 SLAC Meeting – It was discussed that this will be a non-issue for SSTP member states once the amendment to the SSUTA is adopted requiring member states to provide credit. Likewise, federal case law also provides some guidance in that it requires credits to be provided in certain circumstances if the tax is going to be found to be constitutional. Therefore, this issue will only come to light when a transaction is affected by both a member and non-member state. It was pointed out that it would not be fair and equitable to tie a member state's hands and require them to give credit against a tax paid in another state that does not provide a reciprocal credit. Several states believe that they should be able to require reciprocal treatment before they should be required to grant credit for tax paid to another state.

July 2012 Teleconference – This issue is related to Issue 1 in defining what taxes are covered (similar taxes). If the taxes covered are limited to only those taxes against which a credit for sales and use tax paid in another state would be allowed, this should not be an issue.

July 18, 2012 Meeting in Omaha – This issue is somewhat related to Issue #1 and what is a similar tax. Assuming the determination of what is a "similar tax" as described in Issue #1 is followed, this should not be an issue since a tax would only be considered a "similar tax" if credit would be allowed against that tax for sales and use tax paid in another state. That requirement, in effect, would result in reciprocal treatment if the tax is going to be considered a "similar tax."

July 18, 2012 Meeting in Omaha - Initial Discussion on Leases and Rentals

An initial discussion was held to introduce those participating in the meeting to the issues that are somewhat unique to lease and rental transactions. Representatives from the business community indicated that their goal was to prevent the decision whether to lease/rent versus purchasing a product from being decided based on the various states tax codes, but instead wanted to try to create a level playing field and prevent credits from being disallowed because a person leased a piece of equipment instead of purchasing it.

The states tax leases differently. Based on the discussion, leases are taxed by states using one of the following options:

- Each lease payment is taxed by the state to which the property is sourced;
- Each lease payment is taxed if the lease is originally sourced to that state even if the property is subsequently moved to another state;
- All lease payments are taxed upfront by the state to which the lease is initially sourced;
- The lessor is required to pay tax on the purchase of the property being leased, but no tax is imposed on the lease payments themselves.

In order to get a better feel on how states tax leases and which states tax leases in what manner, a request was made for a summary of how the states currently tax leases. This is also needed to make sure all of the scenarios are addressed, if possible. The business community indicated that it does not want the Credits workgroup to make a recommendation that picks winners and losers relating to credit for taxes paid to other states on lease and rental transactions, but instead just indicate that if the other state did X, then this is how you compute the credit for tax paid to that state, etc.

Discussions relating to leases and rentals will continue on the next Credits teleconference which is anticipated to be scheduled within 2 weeks.

August Teleconferences

Teleconferences were held on August 14, 21, and 28, 2012. The purpose of these teleconferences was to discuss the credit issues related to lease and rental transactions. During the initial discussion on the lease and rental transactions, examples were provided that described various fact patterns. A couple of the examples touched on areas relating to when a tax was considered to have been "legally due and paid" to another state.

Under specific sourcing rules for lease and rental transactions, certain lease payments are sourced based on the property's primary location. The property's primary location is based on the address the lessor receives from the lessee. The discussions centered around the lessor collecting the tax based on the address the lessee had provided, when the actual location of the property was known to be in a different state. Therefore, the question was raised as to whether or not the tax the lessor collected should be considered a tax that was "legally due."

This led to various discussions about sourcing transactions and whether the tax a purchaser pays to a seller/lessor on a transaction that the seller sourced in accordance with the requirements of the SSUTA should automatically be considered a tax that was "legally due" thereby allowing the purchaser to use that tax paid as a credit against a tax that may be due on that same transaction in another state. At the SLAC and GB meetings in Milwaukee, the business community and some state personnel were under the impression that if the seller properly sourced a transaction to a particular state using the sourcing hierarchy, the tax collected by the seller from the purchaser was a tax that was legally due. Other states did not think that just because a transaction was properly sourced by the seller to a particular state using the sourcing hierarchy, that the tax paid by the purchaser was "legally due."

The states and business community could not reach agreement on this issue during these calls and it was suggested that this issue be put in front of the GB for discussion and to provide the workgroup direction on how to proceed with this issue. This is one of the key concepts that need agreement if the credits amendment is to go forward. Two documents were put together specifically for the SLAC and GB meeting in Salt Lake City to address this issue and to obtain guidance from the GB. Until that guidance is received, it will be difficult to move forward and finish up the discussion on the outstanding issues and draft the necessary amendment to the SSUTA relating to Credits.