

Memo to Executive Committee from Joan Wagnon:

I've been trying to look longer term at where SSTGB needs to go, and possible changes needed to our basic documents (SSUTA, Bylaws and Rules) in order to accomplish our strategic goals.: adding more states, recruiting more volunteer sellers and passing the federal bill allowing states to require vendors to collect our sales taxes.

The following issues will need to be addressed and may require amending these documents in the future to accommodate certain interests in order to expand the membership of and participation in SST. This memo is intended to be a discussion guide only, instead of draft language to introduce. I'd like to start a discussion of these issues in the executive committee meeting of May 14th, and carry them into the Chicago meeting in June.

I. Vendor Compensation as required by the Federal bill and small seller exception.

Compensation will require adding a new article to the SSUTA – but first, we need a task force to work on how the Governing Board will address the federal requirement for a state to pay “reasonable compensation” as well as what we believe to be an appropriate small seller exception. It is very difficult to discuss one without the other. Any solution will need to reflect the cost of collection study, what states currently allow for small seller exceptions, and other considerations. I intend to appoint this group immediately and begin the discussions in June in Chicago. I envision it functioning much like the sourcing task force with both business and state interests represented, but headed by a “neutral” chair. The executive committee will need to help outline a process for this task group. Preliminary discussions with the congressional coalition have already started and it appears possible that the federal bill might be amended to allow the governing board to set the small seller exception instead of having hard numbers in the federal legislation. So, we need to show we are capable of addressing these issues and moving toward building a consensus.

II. Streamline the Governing Board Processes

A. Managing the Agenda

Our last few Governing Board meeting agendas have been especially confusing to those receiving notices of the meetings. We distribute those preliminary agendas to Governors and legislative leaders who don't have any idea why there are so many, often conflicting proposals which ultimately either get withdrawn or substantially changed. Our agendas contain placeholder amendments and multiple amendments on the same subject. We don't need to amend SSUTA, or the Bylaws, because they give broad authority to the Board and the President to set the agenda,¹ but a rule about setting the board's agenda might be helpful so that everyone knows the process. Just having the discussion of how this process should work might be useful even if a rule is not developed. Here is a proposal to start our discussion on what a rule might say. Once we agree on a concept, it will need to be redrafted to follow our current rules format. I suggest we revise or expand Rule 807.6 Conditions for taking action on items not appearing on posted agenda.

Proposed Revised Rule: 807.6 Governing Board Agenda

1. The President sets the Governing Board agenda prior to each meeting and gives proper notice according to the provisions of SSUTA and the Bylaws..[insert proper reference.]

After the deadline has passed for submitting proposed amendments to SSUTA, the bylaws or rules, the President and Executive Director together shall review the submitted items and determine which ones should be placed on the next meeting agenda and which ones will be referred to a committee or Advisory Council for consideration.

2. Any of the items submitted for a pending board meeting may be postponed to a later meeting if the proposal is incomplete, or there is insufficient time on the agenda for a full discussion of the item. The proposer of the item shall be notified of the action.

3. Any submitted item not referred to an advisory council or committee shall be placed on the agenda within two subsequent meetings unless substantially the same subject matter of that item has been already acted upon the prior meeting. [This will eliminate the need to withdraw placeholder amendments and others which were not adopted.] Any submitted item that has been delayed or referred to a committee can be added to the agenda by a majority vote of the Governing Board.

¹ Section 806, SSUTA and Section 3, Article One in the Bylaws both say "The governing board may take any action that is necessary and proper to fulfill the purposes of the Agreement." Article Five, Section 1 states, "The President shall have such other powers that may be reasonably necessary to the performance of the office. . . ." Further, the Bylaws give both Advisory councils the ability to bring items to the attention of the board. "The Council will consider and respond to those matters referred to it from the Governing Board or its committees. In addition, the Council may recommend items to the Governing Board for consideration. The Governing Board shall give due consideration to the positions of the Council.

4. Each amendment, bylaw change or rule must have a sponsor state, or be advanced by majority vote from either of the Advisory Councils –SLAC, or BAC.

5. A final board agenda shall be published 10 days prior to the meeting and circulated to board members.

6. The Governing Board or a Governing Board committee may take action on items of business not appearing on the posted agenda upon a determination by a majority of those present and voting of the Governing Board or a Governing Board committee that there exists a need to take immediate action and that the need for action came to the attention of the Governing Board or the Governing Board committee subsequent to the agenda being posted or that an emergency situation exists.²

B. Clarify roles of the Advisory Councils and the Governing Board; who can introduce amendments, etc. and the time frame for notification.

Currently the SSUTA only allows amendments to be brought by a Member State, yet the Bylaws clearly anticipate that the Advisory Councils will have the ability to bring items to the attention of the Governing Board. We need either to amend Section 901 to allow SLAC and BAC to bring agenda items forward, or delete the Bylaw references to that ability if SSUTA is not amended. Here is some suggested language, although BAC has an amendment on the Chicago agenda (sponsored as a courtesy by Kansas) that is slightly different.

I believe another problem is the 60 day requirement, which means that we have hardly gotten out of one meeting before the requirement to post items for the agenda is upon us. This seems to lead to placeholder amendments which are often substantially amended prior the meeting, leading to more confusion about what will actually be voted on. Through out the bylaws, notice requirements tend to be 30 days instead of 60 days. I proposed we amend the notice requirements in SSUTA to 30 days.

Section 901: AMENDMENTS TO AGREEMENT Amendments to the Agreement may be brought before the governing board by any member state **or by either advisory council in sections 810 and 811 if a majority of the advisory council approves submitting the amendment.** The Agreement may be amended by a three-fourths vote of the entire governing board. The governing board shall give the Governor and presiding officer of each house of each member state notice of proposed amendments to the Agreement at least **sixty [thirty]** days prior to consideration. The governing board shall give public notice of proposed amendments to the Agreement at least **sixty [thirty]** days prior to consideration. The governing board shall provide an opportunity for public comment prior to action on an amendment to the Agreement.

² This is the existing Rule 807.6.

III. Establish Sanctions for States by Adopting Guidelines to consider by the Board.

The executive committee will be discussing appropriate sanctions at the meeting on May 14th, although at this time, CRIC has not made a recommendation about New Jersey and is continuing its deliberations. Jerry Johnson has drafted a proposed rule which gives us a good basis for discussion at the meeting. [This proposed rule is attached at the end of this document.] Sanctions are found in Section 809 of SSUTA.³

We may have a disconnect between the Agreement and the Bylaws. The Bylaws give CRIC the responsibility to look at noncompliance and report to the board. There is no provision there for SLAC to become involved as noted in SSUTA 810. Jerry's rule proposal has a finding of noncompliance being reviewed by SLAC. I don't think that is necessary or desirable.

IV. Changes to Attract more volunteer sellers:

A. Extension of Amnesty

One of the biggest concerns for sellers attempting to register now is the lack of amnesty in some states. We know some states cannot grant the amnesty; some can. Do we need to open up this issue again?

B. Payment of CSP costs for nexus sellers

This issue continues to arise from our CSP's as a barrier to getting more sellers registered. Although it will not be addressed in this contract, we should at least revisit it to see if states continue to feel the same way or is sufficient funding coming in to revisit this issue?

C. Board needs to have a conversation with the CSP's about their marketing suggestions.

V. Establish Issues Resolution Process; appoint committee.

This is a requirement of the federal legislation and we have never really addressed this issue. Scott thinks Dwight may have appointed someone to chair the committee, but I have not. The Rule that we have in place may not correspond with the SSUTA. Since

³ **SSUTA Section 809: SANCTION OF MEMBER STATES**

A. If a member state is found to be out of compliance with the Agreement, the governing board may consider sanctions against the state. The sanctions that the governing board may impose include expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of a resolution to sanction a member state for noncompliance with the Agreement shall require the affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of the resolution. The member state that is the subject of the resolution shall not vote on such resolution. Resolutions seeking sanctions shall be acted upon by the governing board within a reasonable period of time as set forth in the governing board's rules. The governing board shall provide an opportunity for public comment prior to action on a proposed sanction.

the possibility of a sanction of a state is imminent, and the appeal process for a sanctioned state is the Issues Resolution process, we should get this appointed quickly.

I propose Bruce Johnson as chair, with Robert Thompson of OK and Mary Cameron of AR as members. This will require Executive Committee approval.

The issues resolution process is outlined in Section 1001 – 1003 in SSUTA and is attached at the end of this document.

VI. All states must be able to accept SER

A few states are having difficulty fully complying with this requirement which is in the certification rules. We need to discuss with CSP's and the states how to eliminate this problem. Certainly no new states should be accepted until they demonstrate these requirements are in place and working satisfactorily.

VII. Tribal Interests

The Senate version of the federal bill contains provisions for Tribes to join the SSTGB. We have had the general counsel of the Congress of American Indians and the Navajo Nation come before the Governing Board. One way to deal with the tribal issues is for us to amend the SSUTA; then we would have a strong case to have the language stricken from the federal bill. After looking at this issue, and thinking about the tribal presentations, it seems to me that a Tribe must be a State for purposes of this agreement; otherwise we will have to amend every section. If we adopted size criteria for tribal governments, (reservation area covering more than one state, membership in excess of 50,000, etc.) that will pretty much limit it to the Navajo. Any other smaller tribe would have to work through its state government much the same as any city would.

And these tribes must meet all the other requirements of the SSUTA.

A proposed amendment might read something like this:

Section 213: STATE

Any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico **or any federally recognized tribal government whose contiguous reservation lands span more than one state and have a population greater than 50,000.**

VIII. Interests of Local Governments

State level administration (SSUTA 301) is a critical simplification, but are there ways to address local government issues without sacrificing this principle?

A. Cities that administer their own taxes (LA, AL, AZ, etc.)

There has been some informal discussion about whether it is possible to work out a model for an alternate group to collect the local taxes, such as a state League of Cities.

The Agreement is clear only the state can administer the taxes⁴ but is it possible to find a way to manage this?

B. Very Large Cities

This is probably fairly far down the road, but at least is something we should begin to research and think about. Some of the cities like NYC have their own sales tax administration, but they are larger than most states. Do we want to have a special category for mega cities? Will the business community buy it? Will it bring in large states? Chicago doesn't administer its own sales tax, but does administer an additional local tax on leasing. What about Los Angeles? How many large cities would be included. I'm thinking only cities having populations in excess of 5 million people.

C. Changing state delegations

If either A or B is addressed, it might be appropriate to consider letting states add local officials to their delegations.

Section 806: AGREEMENT ADMINISTRATION

Authority to administer the Agreement shall rest with the governing board comprised of representatives of each member state. Each member state may appoint up to four representatives to the governing board. The representatives shall be members of the executive or legislative branches of the state or a local government in that state. Each member state shall be entitled to one vote on the governing board. Except as otherwise provided in the Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of the governing board present and voting. The governing board shall determine its meeting schedule, but shall meet at least once annually. The governing board shall provide a public comment period at each meeting to provide members of the public an opportunity to address the board on matters relevant to the administration or operation of the Agreement. The governing board shall provide public notice of its meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules establishing the public notice requirements for holding emergency meetings on less than thirty day's notice. The governing board may meet electronically.

X. Deleting old SSUTA sections that no longer apply?

We should appoint a special task force, perhaps headed by Jerry Johnson to review all the provisions of SSUTA and see what needs to be changed and updated: Section 701, 702, 703, A,B,C and rewrite Advisor States.

⁴ **Section 301: STATE LEVEL ADMINISTRATION**

Each member state shall provide state level administration of sales and use taxes. The state level administration may be performed by a member state's Tax Commission, Department of Revenue, or any other single entity designated by state law. Sellers are only required to register with, file returns with, and remit funds to the state level authority. Each member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the sellers registered under the Agreement for that state's tax and the tax of its local jurisdictions, and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered under the Agreement.

XI. Begin work on the recommendations of purchasers to get a list of simplifications that Adviser states can accept even if they cannot achieve full compliance at this time.,

- a. developing a rates and boundaries data base
- b. Simplified Electronic Returns/EFT for ALL Sellers
- c. CRS for ALL Sellers– Registration & Maintenance
- d. State Change Notice
- e. Timeframe for Changes to State Matrices
- f. Credits for transaction taxes paid to other jurisdictions
- g. Uniform Good Faith Standard

SSUTA References

Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION

The governing board shall promulgate rules creating an issue resolution process. The rules shall govern the conduct of the process, including the participation by any petitioner, affected state, and other interested party, the disposition of a petition to invoke the process, the allocation of costs for participating in the process, the possible involvement of a neutral third party or non-binding arbitration, and such further details as the governing board determines necessary and appropriate.

Section 1002: PETITION FOR RESOLUTION

Any member state or person may petition the governing board to invoke the issue resolution process to resolve matters of:

- A. Membership of a state under Article VIII;
- B. Matters of compliance under Section 805;
- C. Possibilities of sanctions of a member state under Section 809;
- D. Amendments to the Agreement under Section 901;
- E. Interpretation issues, including differing interpretations among the member states, under Section 18 902; or
- F. Other matters at the discretion of the governing board.

Section 1003: FINAL DECISION OF GOVERNING BOARD

The governing board shall consider any recommendations resulting from the issue resolution process before making its decision, which decision shall, as with all other matters under the Agreement, be final and not subject to further review.

ARTICLE X

Issue Resolution Process.

Rule 1001. Rules and Procedures for Appeals.

A. Petition for Reconsideration

1. **Request for Reconsideration.** Any party dissatisfied with a decision of the Governing Board may file an appeal with the Governing Board to request reconsideration of the decision.
2. **Contents of the petition.** A petition shall set forth in reasonable detail the basis for the request being made, containing all facts, evidence and legal discussion necessary to allow for a disposition of the matter; a statement as to whether the petition relates to any matter pending in any state or local administrative or judicial process; a statement as to whether a hearing is requested; and an affidavit or affirmation that the facts contained therein are true and correct.
3. **Timing of the petition.** Unless otherwise stated in these rules, a petition for reconsideration shall be filed within sixty (60) days after the decision is issued.
4. **Fee.** There shall be no fee or charge for the initial filing of any petition, although the Governing Board retains the discretion to allocate the costs incurred by the Governing Board and the Issues Resolution Committee in determining the petition to the petitioner in whole or in part, and/or to other persons who have participated in the issue resolution process.

B. Publication of the Petition. On receipt of the petition, the Executive Director shall publish the petition on the website, and provide a copy of the petition to and solicit comment from the following parties:

- (a) the authorized representative of each Member State;
- (b) the Chair of the State and Local Advisory Council;
- (c) the Chair of the business advisory council; and
- (d) the general public as provided in Rule 806.1.

C. No Hearing Requested. If the petitioner has not requested a hearing, the Issues Resolution Committee shall meet to consider the petition and any comment received, and shall issue a recommendation to the Governing Board, no sooner than 60 days, and no later than 120 days, after solicitation of comment. The recommendation shall be in writing and shall provide the Issues Resolution Committee's rationale for the recommendation.

E. Hearing Requested. If the petitioner has requested a hearing, the Issues Resolution Committee shall, no sooner than 60 days, and no later than 120 days, after solicitation of comment, schedule a hearing on the petition and mail notice of the hearing to

- (a) the petitioner;
- (b) any other person who has submitted a comment on the petition;

- (c) the authorized representative of each Member State;
- (d) the Chair of the State and Local Advisory Council;
- (e) the Chair of the business advisory council; and
- (f) the general public as provided in Rule 806.1.

The hearing shall take place at the office of the Governing Board, or another location designated by the Issues Resolution Committee. At the hearing, the Issues Resolution Committee will designate the amount of time the petitioner will be allotted to speak, with a minimum of fifteen minutes to be allotted. Other persons whose written requests to speak at the hearing have been received by the Issues Resolution Committee prior to the day of the hearing will be allotted time to speak at the discretion of the Issues Resolution Committee. Within 60 days of the hearing, the Issues Resolution Committee shall meet to consider the petition and any comment received and shall issue a recommendation to the Governing Board. The recommendation shall be in writing and shall provide the Issues Resolution Committee's rationale for the recommendation.

F. Governing Board Action. Within 60 days of receipt of a recommendation from the Issues Resolution Committee, the Governing Board shall meet to consider the recommendation and issue a decision. The decision shall be in writing and shall provide the Governing Board's rationale for the decision. The decision shall be sent to the petitioner and a copy of the decision shall be posted on the website.

G. Expedited Appeal. The time limitations in this rule may be shortened if the petitioner asks for expedited consideration in its request. In that case, the notice to interested parties shall request written comment within 10 days. The Issues Resolution Committee may meet any time after that 10-day period has expired.

DRAFT Rule from Jerry Johnson

Rule 904.1 Determination of Sanctions

A. Executive Committee to Consider Sanctions. If the Governing Board makes a final determination that a member state is not in compliance with the terms of the Agreement, the Executive Committee shall consider what sanctions should be recommended to the Governing Board pursuant to the procedures set out in this rule.

B. Notice and Comments. The Executive Committee shall notify the authorized representative of each member state, the Chair of the State and Local Advisory Council, the Chair of the Business Advisory Council and the general public as provided in Rule 806.2(B) of the determination of noncompliance and that sanctions are being considered. The Committee shall provide a public comment period which shall not be shorter than 30 days. All comments received by the Executive Committee shall be posted on the governing board website.

C. Public Meeting. No sooner than 10 days after the close of the public comment period, the Executive Committee shall meet in a public meeting, which may be by teleconference pursuant to rule 807.1(B)(2), convened in accordance with Rule 807 to determine the recommendation regarding sanction to be made to the Governing Board. If a member of the Executive Committee represents the state that has been determined to be in noncompliance, that member shall not participate in a committee vote on the recommendation. The meeting shall provide an opportunity for public comments. The subject state shall be afforded an opportunity to be heard by the Committee at such meeting. When a determination is made by the Executive Committee, it shall issue a written recommendation. The recommendation shall provide the Committee's rationale for its recommendation. A copy of the recommendation shall be sent to the subject state and the Governing Board.

D. Possible Recommendations. Recommendations which may be made by the Executive Committee include, but are not limited to:

1. Modification in status of the member state from full member status to associate member status. This sanction includes relieving sellers registered under the agreement which do not have nexus with such state from the requirement to collect in such states;
2. Suspension of the state's right to vote on amendments to the Agreement;
3. Suspension of the state's right to vote to determine if a petitioning state is in compliance with the agreement;
4. Suspension of the State's right to have any delegates serve on the Governing Board or to vote on any matter which may come before the Governing Board; or
5. Expulsion.

E. Agenda. Actions recommended by the Executive Committee shall be placed on the agenda of the Governing Board for the next regular meeting if there is sufficient time for the required notice to be given or for a special meeting.

F. Effective date of Sanction. The Governing Board shall determine the effective date of any sanction it imposes. It may provide for a conditional effective date for a sanction which would result in the sanction being imposed only if the subject state failed to come into compliance by a date certain.

G. Governing Board Action. At a meeting where a recommendation of the Executive Committee for a sanction is on the Agenda, the Governing Board may impose a sanction recommended by the Executive Committee, may impose a different sanction or may defer any action on imposition of a sanction until a date certain.

H. Publication of Decision. Once the decision on sanctions is made by the Governing Board, the decision shall be sent to the subject state and a copy of the decision shall be posted on the Website.