

**Minutes of Streamlined Sales Tax Governing Board and
Executive Committee
November 9, 2005
Tampa, Florida**

Votes reported in these minutes were by unanimous voice vote unless otherwise indicated.

The following members of the Executive Committee attended:

Senator Dwight Cook (ND)	President
Secretary Joan Wagnon (KS)	1 st Vice President
Delegate John Doyle (WV)	2 nd Vice President
Commissioner Jerry Johnson (OK)	Secretary/Treasurer
Harold Fox (NJ)	Member
Senator Orville Smidt (SD)	Member
Senator Ron Amstutz (OH)	Member
Commissioner Loren Chumley (TN)	Member
Commissioner Bruce Johnson (UT)	Member

Dwight Cook opened the meeting of the Executive Committee at 8:15 am. Following the introduction of Executive Committee members, the group turned its attention to compensation for certified service providers, as contained in the document "Statement on Model 1 Compensation." On Item 1 (Payments to CSPs for Volunteer Sellers) it was noted that certified service providers (CSPs) could charge sellers in states where they are not volunteers.

On Item 2 (Bonus Payments for Volunteer Sellers) there was discussion of the split of bonus payments between retailers and the CSP and whether this split be defined in the contract. Bruce Johnson suggested that the group solicit input from CSPs on this item.

Following a discussion of the definition of a volunteer seller, it was stated that the definition, for Model 1 purposes, would be on a state by state basis. It was also noted that volunteer status remains for a 24-month period, regardless of in-state activities.

Following a discussion of the remaining elements of the Statement on Model 1 Compensation, Joan Wagnon moved that the group recess for a closed session to discuss CSP compensation, the cost of collection study and one other item.

Streamlined Sales Tax Governing Board

The following member and associate member states were present at the meeting of the Governing Board: Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, and West Virginia.

Dwight Cook provided a summary of the closed session of the Executive Committee, including the report by Peter Merrell of Pricewaterhousecoopers on the Cost of Collection study, the additional work by TaxWatch on the central registration system, and negotiations with certified service providers who have responded to the revised request for proposals.

Compensation Principles

Jerry Johnson reviewed the document, Principles on Model 1 Compensation. This was followed by the suggestion from Senator Cook that “small and medium sized” in Item #3 be changed to “all”. It was agreed that Items #5 and #6 be combined.

Following a question from Delegate Doyle on payment of compensation to vendors who are collecting now, discussion was opened to the public. Steven Kranz commented that under Sections 601 and 602 of the Streamlined Sales and Use Tax Agreement (Agreement), that all volunteers, regardless of nexus, should receive compensation.

In response to this comment, Jerry Johnson stated that the intent of the states, in sections 601 and 602 was to pay a base level of compensation. He added that the states need to develop a compensation package that meets the objectives under discussion and provides coverage by certified service providers.

Bill Riesenberger stated Ohio’s support of a broad-based compensation model.

Following a request for specific comments on the compensation document, Steve Kranz suggested that the base fee should apply to all using a certified service provider.

Warren Townsend asked about the 13 volunteer sellers who “came on board” during 2002. Jerry Johnson responded that it would be troublesome if the states are giving them less compensation than those who are registering now.

Charles Collins mentioned the situation with Item 8 in the Statement on Model 1 Compensation (Certification of Exempt Product Mapping). Jerry Johnson noted that several states have indicated that they cannot go along with #8. Loren Chumley responded that it was important for the states to do the best they can with product mapping.

In response to additional comments on the presence of the nexus question on the central registration page, Bruce Johnson commented that many vendors do not spend time thinking about whether they have nexus, and that it isn’t always clear whether they do.

Delegate Doyle moved that Items 5 and 6 in “Principles of Model 1 Compensation” be combined. This was seconded by Jerry Johnson and passed. Jerry Johnson then moved to change “principles” to “objectives.” This was seconded by Ohio and passed.

Jerry Johnson then moved changes to Item 3. This was seconded by Kansas. Joan Wagnon then moved adoption of the renamed document, Objectives on Model 1 Compensation. This was seconded by South Dakota and passed. (See Addendum for the text of Objectives of Model 1 Compensation.)

The group then returned to discussion of the Statement on Model 1 Compensation. Following discussion of base compensation sellers, an amendment to Item 1 and a motion to adopt Item 1 were withdrawn.

The meeting of the Governing Board was recessed at 12:30 pm

Following the resumption of the Governing Board meeting at 1:35 pm, Senator Cook nominated Marshall Stranburg of Florida as co-chair of the State and Local Advisory Committee. Acceptance of the nomination was moved by Joan Wagnon, seconded by New Jersey, and passed.

Approval of a \$9200 expenditure for additional security features in central registration system, which is being developed by TaxWatch, was moved by Joan Wagnon, seconded by Kentucky and passed.

Following discussion of meeting schedules, it was agreed to schedule a weekly Executive Committee teleconference meeting at 3:00 pm Eastern on Wednesdays. Agendas are to be posted by noon on Monday and the initial weekly meeting will be on November 23.

Bruce Johnson recommended that a local government representative, in addition to the chair of the SLAC, serve as an ex officio member of the Executive Committee. He offered to draft an amendment for this purpose.

Bruce Johnson noted the importance of a good website and moved that the State and Local Advisory Council and Business Advisory Council each be asked to assign three individuals to work with the Governing Board on its website. This was seconded by Delegate Doyle and passed.

Jerry Johnson reviewed income and expenses of the Governing Board, explaining that expenses are meeting-related or for the cost of collection study. Joan Wagnon moved that these report be filed for an audit. This was seconded by Bruce Johnson and passed.

The use of a publishing service to maintain the Streamlined Sales and Use Tax Agreement was suggested.

Statement on Model 1 Compensation

The delegates then returned to discussion of the Statement on Model 1 Compensation.

For Items 1 (Payments to CSPs for Volunteer Sellers) and 2 (Bonus Payments for Volunteer Sellers), concerns were expressed about not driving states away from the Agreement with requirements for compensation to sellers with nexus. Following a straw vote on #1 and 2, Kentucky moved to adopt these items. This was seconded by Kansas and passed on a voice vote with “No” votes from Ohio and Utah.

Joan Wagnon moved adoption of Item 3 with “may” changed to “will.” and inclusion of “for a period of 24 months from the date the obligation to collect commences” This was seconded by Oklahoma and passed. It was clarified that the intent here is two years from the commencement of collection.

The inclusion of earlier volunteers in the definition of volunteer seller was moved by Jerry Johnson, seconded by Joan Wagnon and passed.

Loren Chumley moved adoption of Option 1 for Item 4 (Definition of Volunteer Seller). This was seconded by Joan Wagnon and passed on a voice vote with “No” votes from North Dakota and Ohio.

There was no action on Item 5 (Compensation Structure/Compensable Transactions) or Item 6 (Seller Amnesty/Obligation to Collect Taxes).

Adoption of Item 6 (previously Item 7, Liability for Underpayment or Nonpayment of Taxes) with a change from 7 days to 10 days was moved by Jerry Johnson, seconded by Kentucky and passed.

Adoption of Item 7 (previously Item 8, Certification of Exempt Product Mapping) was moved by Jerry Johnson, seconded by West Virginia and passed.

A new Item 8 on the structure of a minimum fee was included as an advisory basis.

Amnesty

Tennessee moved and Utah seconded paragraphs 1 & 2 of a motion on amnesty

Michigan noted that it cannot extend amnesty (per paragraphs 1 & 2) under current law. Loren Chumley commented on the limbo period between registration and collection.

Tennessee moved and West Virginia second an amendment to paragraph 2 (add “or is unable to provide” following “provide”). The amendment and the original motion passed.

Following discussion of paragraph 8, Oklahoma moved to adopts paragraphs 3-7 of the motion. This was seconded by NJ and passed. (See addendum for the text of the motion.)

Oklahoma then moved and Kentucky seconded adoption of a temporary rule and procedure of the Streamlined Sales Tax Governing Board pursuant to the authority of Section 806 of the Agreement (Items “a-g” except “c” of the proposed rule and procedure were accepted.) This was passed on a voice vote. (See addendum for the text of the rule and procedure.)

The meeting of the Governing Board was adjourned at 4:00 pm.

[Note: This was followed by a closed session of the Executive Committee to discuss contracts with CSPs.]

Respectfully submitted

Kenneth R. Beier
Multistate Tax Commission

Addendum to Minutes

Objectives on Model 1 Compensation

- 1) Ensure adequate availability of Certified Service Providers both in the near term and the long term.
- 2) Consider the overall financial interests of the states in encouraging sellers to begin collecting sales and use taxes.
- 3) Ensure that CSP services are available to all businesses (including traditional retail stores) regardless of their size and regardless of whether or not the business has an obligation to collect; and to assist these businesses in collecting sales and use taxes as required by the Agreement.
- 4) Allow the greatest number of states to participate as possible
- 5) Establish compensation levels that are reasonable and would appear to be reasonable to the general public. This would include but not necessarily be limited to prohibiting payments that would be excessive relative to administrative costs associated with collecting sales and use taxes.
- 6) Consider the political situation in each state regarding compensation.

Statement on Model 1 Compensation

- 1) **Payments to CSPs for Volunteer Sellers** - All compensation to CSPs for voluntary sellers will be provided for by contract with the Governing Board and borne by the member states. The CSP may not charge the seller for states in which the seller is a volunteer. This is not intended as a guaranty that every seller would be able to enter into a contract with a CSP. The amount of the compensation to the CSPs has not been determined.

- 2) **Payments to CSPs for Non-Volunteer Sellers** - Compensation to CSPs for non-voluntary sellers may be provided for by contract with the Governing Board. The CSP may charge the seller for states in which the seller is not a volunteer. This is not intended as a guaranty that every seller would be able to enter into a contract with a CSP. The structure and amount of the compensation, if provided, has not been determined.
- 3) **Bonus Payments for Volunteer Sellers** - States will provide additional compensation to CSPs for a period of 24 months from the date the obligation to collect commences that may be passed along to volunteer sellers. This additional compensation shall cease if vendor's compensation is mandated by federal legislation. The amount of this compensation has not been determined. A cap or ceiling on the amount of the bonus payments is being discussed.
- 4) **Other Vendor Discounts Paid by States** - States that have a general vendor's discount may use that discount toward the payment of compensation to CSPs or the bonus payments for volunteer sellers.
- 5) **Definition of Volunteer Seller** - A seller that represents that it does not have a requirement to register in a state will be considered a volunteer seller for that state. An individual state may challenge the volunteer status of a seller under the laws of that state. Affiliate nexus will not be considered in determining if a seller is eligible for volunteer status for purposes of compensation under Model 1. The Executive Committee shall examine ways of providing further clarification when determining if a seller can be considered a volunteer. If it is determined that a seller was not eligible for volunteer status as of their date of registration, the CSP will not be required to repay the compensation it received for that seller. A seller that is a volunteer in a state on the date of their registration shall ~~be allowed to maintain that status~~ continue to be treated as a volunteer for Model 1 compensation purposes for a period of 24 months regardless of the activities of the seller in that state during the 24 month period.
- 6) **Liability for Underpayment or Nonpayment of Taxes** - For sales or use taxes that are owed to a state but not remitted by the seller, the CSP shall notify the state and the seller of the failure to remit within 10 days after the due date of the return. If such notice is provided, the obligation to collect the tax shall be on the member state. If such notice is not provided, the obligation to collect the tax shall be on the CSP.
- 7) **Certification of Exempt Product Mapping (for products not included in the Matrix)** - Through the certification process, each state will verify the accuracy of the taxability rules for product and entity exemptions. To the extent allowed under each state's laws, ~~The~~ CSPs will ~~be~~ not be held liable if rules that have been approved by the states return incorrect determinations of taxability. Each State will be responsible for notifying the CSPs of tax changes that impact the taxability rules.

The CSPs will be required to modify the rules and have them approved by the state. The mapping of individual products to the appropriate taxability rules will be the responsibility of the CSP and/or the seller. Liability for incorrect tax results due to product mapping errors will be the responsibility of the CSP. However, the CSP may through its contract with a seller, provide that the seller will reimburse the CSP for any assessment based on mapping errors that are made by the seller.

An amendment to the Agreement will be pursued immediately to address the issue of state certification of CAS and liability relief related to the use of that software within designated parameters.

- 8) **Structure of Possible Minimum Fee** - The states are considering a minimum fee that will be paid out of new revenue. This fee would apply to each state individually. This minimum fee may be structured as either (a) a uniform amount per state, or (b) as uniform amount for small states, a larger uniform amount for medium sized states, and a still larger uniform amount for the largest states. We are seeking comments on both of these approaches.

Statement on Amnesty

1. It is the intent of the Governing Board that for Model 1 and Model 2 sellers, the amnesty period provided by Section 402 A. 2. of the Agreement shall be extended by each member state to include the period of 1 year commencing on the ~~first day of the calendar month after at least 60 days notice~~ date that notice is provided that adequate CSP and CAS services are available.
2. Each member state shall determine how under its laws, rules and practices it can provide or is unable to provide such an extension of amnesty.
3. If a member state cannot implement the intent of the Board, it shall notify the Governing Board in writing of the issues associated with extending the amnesty period, its policy regarding amnesty, and the consequences on sellers. This will be posted on the state's web site and the Streamlined web site.
4. Sellers are hereby notified that if they register and delay their collection obligation, not all states may be able to provide amnesty between the date of the initial registration and the date the obligation to collect begins. It is the intent of the Governing Board that all member states utilize the authority available to them under their laws to provide amnesty for interstate sales relief to Model 1 and Model 2 sellers during this period.
5. Each member state shall determine how under its laws, rules and practices it can provide such amnesty.
6. If a member state cannot implement the intent of the Board, it shall notify the Governing Board in writing of the issues associated with extending the amnesty period, its policy regarding amnesty, and the consequences on sellers. This will be posted on the state's web site and the Streamlined web site.

7. The Executive Committee is authorized to determine what constitutes adequate CSP and CAS services for the purposes of determining when Model 1 and Model 2 sellers will be obligated to begin collecting sales and use taxes.

Temporary Rule and Procedure on Amnesty

The following is a temporary rule and procedure of the Streamlined Sales Tax Governing Board pursuant to the authority of Section 806 of the Agreement.

- a) For a volunteer seller registering under Model 1, their obligation to collect will commence on the first day of the calendar month after at least 60 days notice that adequate CSP services are available. The Executive Committee will determine what constitutes adequate CSP services.
- b) For a volunteer seller registering under Model 2, their obligation to collect will commence on the first day of the calendar month after at least 60 days notice that adequate CAS services are available. The Executive Committee will determine what constitutes adequate CAS services.
- c) When notified of their CSP options, a Model 1 seller that fails to register with a CSP and begin collecting as outlined above or fails to register and begin collecting under Model 2 or Model 4 will lose its amnesty granted under Section 402 of the Agreement. A seller has the option of canceling its registration pursuant to the terms of the Agreement.
- d) When notified of their CAS options, a Model 2 seller that fails to complete its registration under Model 2 and begin collecting as outlined above or fails to register and begin collecting under Model 1 or Model 4 will lose its amnesty granted under Section 402 of the Agreement. A seller has the option of canceling its registration pursuant to the terms of the Agreement.
- e) The obligation to collect sales and use taxes for 36 months as provided in Section 402 of the Agreement will begin on the date the collection obligation begins.
- f) States will hold registrations of any volunteer not already registered in that state that registers through the central registration system as a Model 1 and Model 2 seller in suspense and will not take enforcement action for failure to file a return until after the obligation to collect begins.

Motion on Amnesty

1. It is the intent of the Governing Board that for Model 1 and Model 2 sellers, the amnesty period provided by Section 402 A. 2. of the Agreement shall be extended by each member state to include the period of 1 year commencing on the ~~first day of the calendar month after at least 60 days notice~~ date that notice is provided that adequate CSP and CAS services are available.
2. Each member state shall determine how under its laws, rules and practices it can provide or is unable to provide such an extension of amnesty.

3. If a member state cannot implement the intent of the Board, it shall notify the Governing Board in writing of the issues associated with extending the amnesty period, its policy regarding amnesty, and the consequences on sellers. This will be posted on the state's web site and the Streamlined web site.
4. Sellers are hereby notified that if they register and delay their collection obligation, not all states may be able to provide amnesty between the date of the initial registration and the date the obligation to collect begins. It is the intent of the Governing Board that all member states utilize the authority available to them under their laws to provide amnesty for interstate sales relief to Model 1 and Model 2 sellers during this period.
5. Each member state shall determine how under its laws, rules and practices it can provide such amnesty.
6. If a member state cannot implement the intent of the Board, it shall notify the Governing Board in writing of the issues associated with extending the amnesty period, its policy regarding amnesty, and the consequences on sellers. This will be posted on the state's web site and the Streamlined web site.
7. The Executive Committee is authorized to determine what constitutes adequate CSP and CAS services for the purposes of determining when Model 1 and Model 2 sellers will be obligated to begin collecting sales and use taxes.