

MINUTES OF THE STREAMLINED SALES TAX GOVERNING BOARD MEETING
HELD IN SEATTLE, WA DECEMBER 13-14, 2006

Welcome, Roll Call, and Introductions:

Senator Dwight Cook called the meeting at 8:45am and welcomed delegates to the meeting. All member states were present except Nevada. Senator Cook introduced Mr. Jim McIntire and Mr. Ross Hunter from the State of Washington to the Governing Board. Mr. Hunter welcomed everyone to Washington State.

Senator Cook commented that both Rhode Island and Vermont would soon become full members on January 1, 2007.

Approval of Minutes from August 2006 meeting:

Mr. Craig Rook stated that the minutes incorrectly stated that New Jersey was absent at the time of the vote on Rhode Island becoming a full member state. Motion made by Secretary Joan Wagnon and seconded by Commissioner Chumley to approve the minutes with the one correction on how New Jersey voted. That motion was approved on a voice vote.

Executive Director's Report:

Mr. Scott Peterson introduced the two new Streamline employees: Executive Assistant Jessica Ando and IT Director David Thompson. He reported that Streamline has a fully staffed and furnished office. He also referenced significant changes that have been made to the website thanks to the diligent work of Mr. Thompson and that because of all that work, the Governing Board may not have to have a new website. Mr. Peterson said that one of the changes to the website was the addition of a calendar that will inform every one of all scheduled meetings and conference calls. He said that there is a place on the website to submit change request and new spots for the Business Advisory Council (BAC) and State and Local Advisory Council (SLAC).

Mr. Peterson reported that Streamline had posted two Requests For Proposals (RFPs); one for publishing Streamline documents and one for a new website. He reported that no one responded to the RFP for publishing Streamline document and 5 companies had timely responded to the RFP for a new website.

Mr. Peterson also reported that he attended a meeting of the National Conference of State Legislatures in San Antonio. He said this was a new group of legislators and it was a good opportunity to get the word out. He said that NCSL would have another meeting in Austin, Texas in January with an agenda of Streamline issues.

Mr. Peterson said he would soon conduct a new survey on certified service provider (CSP)/certified automated system (CAS) liability relief to provide more information on what the statute provides to those sellers using CAS and CSP. He said that the rules

require that the email lists expire at the end of each year and everyone who wants to remain on the lists will have to sign up again.

Senator Cook added everyone should view the Streamline presentation created by Commissioner Loren Chumley. He said that after he used it a lobbyist reported that he finally understand the Streamlined Sales Tax.

Motion by Tennessee to amend Section 309 regarding telecommunication sourcing:

Commissioner Chumley explained that this amendment would put into the Streamlined Sales and Use Tax Agreement (SSUTA) additional telecommunication sourcing rules for ancillary services and Internet access and a definition for ancillary services. Commissioner Chumley moved and Mr. Larry Wilkie seconded a motion to approve the proposed amendment.

Ms. Pam Cook with Bellsouth expressed her company's support the amendment.

The motion was approved on a roll call vote.

Motion by Utah to amend Section 331 relating to relief from liability for purchasers:

Mr. Stephen Kranz explained that the amendment was a furtherance of the business community's desire to make sure that states provide the same liability relief to purchasers that they do to sellers. Mr. Kranz stated that the amendment had been discussed by the SLAC with no real issues. In response to a question from Mr. Richard Dobson, Mr. Kranz stated that the amendment to the SSUTA only dealt with core requirements already expressed in that section of the SSUTA.

Commissioner Chumley suggested that it might be a good idea if Streamline published a taxability matrix.

In response to a question from Commissioner Jerry Johnson about the sentence that says that the provisions go into effect immediately if no legislation is required whether or not he needed to call the State of Oklahoma to make sure that they fall under the guidelines, if this passes, Mr. Kranz said if a state did not need to adopt legislation to make this effective it should go into effect immediately.

Secretary Wagnon moved and Senator Luke Kenley seconded the approval of the amendment.

In response to discussion, Commissioner Bruce Johnson said this amendment would put the word of the tax agency above the word of the law. He said it was inappropriate to do this for the seller who might not have all the information surrounding a sale, but not for the buyer who does have such information. Commissioner Johnson stated that it was not appropriate for the states to vote for this amendment.

In response to a question from Ms. Linda Palmer from New Mexico about Section 331 A providing relief from penalty and Section 331 B says relief from liability for tax and interest Mr. Kranz stated that when the business community first proposed this idea they were not trying to accomplish as much relief as they are now.

Senator Kenley stated that relief from liability is a practical solution. If the states make mistakes, it's up to them to correct them.

Mr. Dan Noble of Wyoming said they have a statutory prohibition to this amendment but that if the Wyoming Legislature were asked to make the change he would assume it would pass.

Mr. Kranz reiterated his point that this is critical to getting broad-based business support for Streamline.

Commissioner Jerry Johnson moved and Secretary Wagnon seconded that the first Subsection E was redundant and that it should be deleted. That motion passed on voice vote.

Mr. Craig Rook expressed that New Jersey had concerns about the effect of this issue.

Mr. Charles Collins of Taxware and Ms. Carolyn Ellerson of Federal Express both urged the Governing Board to adopt the amendment.

Ms. Carolyn Iafrate explained that small businesses are looking for a language they understand.

The motion was adopted on roll a call with Michigan and New Jersey voting no.

Motion by Michigan to amend Section 806 relating to Governing Board meetings:

Mr. Dale Vettel explained that the purpose of Michigan's amendment is to put into the SSUTA an understanding that the Governing Board will meet quarterly. Mr. Vettel moved and Senator Orville Smidt seconded the motion to amend.

Secretary Wagnon said that she felt the Governing Board should meet as often as necessary to accomplish its work, and was not opposed to meeting quarterly. She stated that the proposal is the type of concept better expressed in the Board's bylaws than in the SSUTA. Mr. Robert Cox agreed with Secretary Wagnon that it is the type of thing that should be in the rules rather than the SSUTA.

After some discussion, Commissioner Bruce Johnson moved and Secretary Wagnon seconded that the Governing Board meet 4 times a year with one designated as an annual meeting.

In response to a question from Mr. Riesenberger, Senator Cook said that the motion made by Commissioner Johnson was a substitute motion and if adopted it would eliminate the original motion.

The motion passed on roll call with 18 states voting Yes and 1 state (Indiana) voting No.

Motion by Ohio to amend Section 809 regarding when states must comply with amendments:

Mr. Riesenberger explained that the Ohio proposal is designed to give states certainty as to when they must deal with changes to the SSUTA. He explained that the Ohio proposal would effectively give states two years after the adoption of an amendment or interpretive rule or the first day of a calendar quarter following the end of one full session of the state's legislature before the state could be sanctioned for noncompliance.

Secretary Wagnon moved and Mr. Larry Wilkie seconded approval of the proposed amendment.

Commissioner Bruce Johnson said that even though some things do not need to be addressed in the SSUTA, this proposal provides an amount of time to make changes. He expressed his support for the amendment.

The motion passed unanimously on a roll call vote.

Motion by North Carolina to add a definition of fur clothing to the SSUTA:

Mr. Andy Sabol explained that proposed amendment by North Carolina was to provide a definition of fur clothing for those states that wanted to tax fur clothing differently than all other clothing. Mr. Sabol moved and Mr. Larry Wilkie seconded a motion to adopt the definition.

Commissioner Jerry Johnson stated that the challenge has been to find a balance between simplicity and uniformity and the ability of a state to create its own tax system. He said he would vote in favor of the definition and let the states that need it have it.

Commissioner Chumley spoke in favor of the definition, although reluctantly. She noted that many definitions had sub-definitions and that she didn't think adding one more would make much difference.

In response to a question from Senator Kenley about how this impacted Minnesota's tax, Mr. Wilkie explained that the issue for Minnesota was discussed at the August meeting and Minnesota was not found out of compliance.

Ms. Hardt reported that the definition was prepared through the SLAC by interested delegates.

Mr. Kranz said that he could not find fault with the draft, but the Business Advisory Council was opposed to adoption of the definition. Mr. Frank Julian of the Federated Department Stores spoke in opposition to the definition. He stated that in his opinion New Jersey's fur tax took it out of compliance with the SSUTA and adopting this definition is not the proper response.

Mr. Michael Wasser expressed Vermont's opposition to this definition. Mr. Noble stated that if Wyoming could vote he would support the fur definition as it provides a simpler solution than the current excise taxes.

In response to a question from Senator Cook about whether or not the New Jersey Legislature would have voted differently had they thought adopting their fur tax would take them out of compliance, Mr. Rook said that in his opinion if his Legislature had thought their standing with Governing Board would have been affected, they would have voted differently.

Senator Cook suggested that perhaps the definition could sunset after 2 to 4 years which would give the states who used the definition the opportunity to find a way to do without the tax. Delegate Doyle voiced his support for a sunset.

Mr. Riesenberger stated that it was difficult for him to understand the criticism of telling people they cannot do things outside their sales tax when the SSUTA allows a state to say which taxes will be subject to the SSUTA and does not have a definition for a sales tax.

Mr. Wasser stated that the states needed to police the SSUTA and if they don't the entire process will unravel.

Mr. John Nugent stated that Rhode Island exempts all clothing, including fur clothing, and if Rhode Island had a vote, he would vote yes because having a definition created more simplification than having a replacement tax.

Mr. Kranz requested that the topic be tabled and discussed in connection with the discussion on New Jersey's response to the Governing Board's letter.

The motion by Mr. Sabol was approved on a roll call vote with Kansas, North Dakota and West Virginia voting no.

Motion by Wyoming to repeal Section 312 of the SSUTA:

Mr. Noble explained that Wyoming submitted the proposed repeal of Section 312 because of the changes it would require of states, the confusion over what it meant, and so the Governing Board had a choice. He said that the members of Compliance Review and Interpretations Committee (CRIC) discussed an interpretation related to multiple points of use (MPU) and there was disagreement about what it meant.

Mr. Noble moved and Mr. Tom Gillaspie seconded the adoption of the Wyoming motion to repeal Section 312 of the SSUTA.

Commissioner Chumley expressed her support of the motion and echoed Mr. Noble's sentiments. She stated that not many other items have created as much conflict as this has caused and would like to see it resolved.

Ms. Diane Hardt reported that a group from the BAC and the SLAC had been working on a compromise. She said the solution seemed to be the repeal of Section 312 along with the adoption of a set of Governing Board rules that would provide for the sourcing of the products and services most likely to be impacted by Section 312.

Ms.Carolynn Iafrate explained that the rules address how to source prewritten computer software, computer related services and software support/maintenance agreements. She said that the proposed rules provide for the sourcing of these three according to the general sourcing rules found in the SSUTA. The rules also include examples of transactions and how the transaction is sourced using the rules.

Ms. Hardt move and Mr. Dobson seconded approval of the rules.

There was general discussion about the effective date of the repeal of Section 312. Mr. Riesenberger pointed out that states may have already put this into their law, which makes it difficult to go into effect immediately. There was consensus that states would be able to follow the recently adopted amendment by Ohio concerning the amount of time a state has to adapt to SSUTA changes.

The motion by Mr. Noble was approved unanimously on a roll call vote. The motion by Ms. Hardt was approved unanimously on a roll call vote.

Commissioner Bruce Johnson asked that the minutes reflect that Utah withdrew amendments listed under Items 5 and 6.

A motion by Michigan to amend the SSUTA definition of delivery charges:

Mr. Vettel explained that Michigan would like to the definition of delivery charges to be amended to provide states with additional flexibility crafting exemption for delivery charges. Mr. Vettel moved and Mr. David Casey seconded approval of the amendment.

Mr. Vettel went on to say that the current definition of delivery charges does not offer states the ability to effectively target delivery charge exemptions for the printing industry. He also stated that it does not sufficiently distinguish true delivery charges from related charges, thereby increasing the revenue losses states must contend with when contemplating exemption of delivery charges.

In response to a question from Mr. Dobson, Mr. Vettel explained that it was not an attempt to change the definition, but to separate the components more clearly.

There was general discussion on whether or not a company could inflate the charge for the delivery or parts of delivery as a way to avoid sales tax on the delivered item.

In response to a question from Senator Janis Lee of Kansas, Mr. Vettel explained that there is no better defense today than there would be after this new definition if a business decided that half the cost of a product was the cost of the delivery charge. These are toggles so it's up to the state to choose whether or not they want to tax it.

In response to a question about what is the actual cost of transportation, Mr. Vettel said they were looking at what was customary in the industry.

Delegate Doyle suggested that this was something that might be better to include in the amendment.

In response to a question from Commissioner Chumley about the use of "printed material" in the definition, Mr. Vettel responded that they wanted to make it clear and specific.

In response to a question from Mr. Riesenberger, Mr. Vettel explained that this amendment would move packing, handling and crating to a definition called "preparation for delivery" which a state could tax or exempt as they wanted.

In response to a question by Senator Cook, Mr. Myles Vosberg explained that North Dakota taxes delivery charges and that this would not create an exemption because North Dakota chose to tax all freight. He said that it would make no difference in North Dakota if freight is marked up as it would be taxable.

Mr. Mark Bendick of The Gap stated that providing additional options would only make it more complicated for those trying to collect tax.

Mr. Wayne Zakrzewski of J.C. Penny stated that states should get flexibility in certain instances, but these charges have to be treated one way or another. He said that they need to be taxable or not taxable. He reminded people that what the states do must work for smaller internet retailers.

Mr. Gary Yeats of Advo explained the process used by his company and most other companies as they deliver direct mail and encouraged the adoption of the Michigan amendment.

Ms. Melanie Hill of Dow Lohnes Price explained that she represents a large number of people in the direct mail business. She explained the process used by most companies and how much of an impact it would be on their business if states did not have the flexibility provided in the Michigan proposal.

Delegate Doyle stated that the proposal was confusing. He believes that the amendment makes the policy and if it is something we want to do then the folks who want it done should get together and work it up to be put in the right place in the agreement.

Mr. Vettel withdrew the proposed amendment and made a motion to refer it to SLAC and that it be placed on the June Governing Board agenda. Delegate Doyle seconded that motion and it was approved by voice vote.

A motion by Utah to amend the SSUTA regarding the definition of digital products:

Commissioner Jerry Johnson advised the Governing Board that the states and business community had not yet worked through their differences on this issue. Commissioner Bruce Johnson asked that the proposed amendment be withdrawn and placed on future agenda. Mr. Kranz agreed with Commissioner Johnson that there wasn't yet an agreement.

A motion by Oklahoma to amend the SSUTA regarding the definitions of telecommunication services and digital product:

Commissioner Jerry Johnson asked that the Oklahoma amendment be withdrawn for the same reason and be placed on a future agenda.

A motion by the State and Local Advisory Council to adopt a rule regarding the use of healthcare definitions:

Mr. Craig Rook explained that this rule does two things. It explains how states are to use the healthcare definitions in the SSUTA and it includes a list of healthcare products with where they are placed in the appropriate healthcare definition.

Mr. Rook moved and Mr. Dobson seconded a motion to approve the rule and accompanying list with the deletion of "and injectables" under "collagen implants". That motion was approved unanimously on a roll call vote.

A motion by the State and Local Advisory Council to adopt a rule regarding the use of telecommunications definitions:

Ms. Hardt explained that this rule would provide states with guidance on how to use the telecommunications definitions found in the SSUTA and Governing Board rules.

Ms. Hardt moved and Mr. Casey seconded approval of the rule. That motion was approved unanimously on a roll call vote.

A motion by the State and Local Advisory Council to adopt a rule regarding the use of telecommunications sourcing:

Ms. Hardt explained that the proposed rule would provide states guidance on how to use the telecommunication sourcing rules found in the SSUTA and Governing Board rules.

Ms. Hardt moved and Mr. Casey seconded approval of the rule. That motion was approved unanimously on a roll call.

A motion by the State and Local Advisory Council to adopt a rule regarding exemption administration procedures:

Ms. Hardt explained that the proposed rule would govern how to use the Streamline exemption certificate. She said that the states and industry were all in agreement.

Commissioner Bruce Johnson asked whether the rule needed to be changed as a result of the repeal of Section 312. There was agreement that Mr. Peterson should revise the rule and exemption certificate to account for the repeal of Section 312.

Mr. Casey moved and Commissioner Bruce Johnson seconded approval of the rules with changes to account for the repeal of Section 312. That motion was approved unanimously on a roll call vote.

A motion by the State and Local Advisory Council to adopt a rule regarding drop shipments:

Ms. Hardt explained that the proposed rule defined drop shipments and provided guidance to states how they are to treat a transaction in which a product was drop shipped.

Ms. Hardt moved and Mr. Casey seconded approval of the rules. The motion was approved unanimously on a roll call vote.

A motion by the State and Local Advisory Council regarding the data elements to be included in the Informational Report Schema:

Ms. Harrell explained the need for states to provide information to certified service providers and sellers about the frequency and information needed on an Information Return. She explained the different data elements the states felt were necessary to be included in the information return. Mr. Peterson reported on the frequency and dates when the states would require an informational report. He said that he would develop a schedule which would be posted on the website for use by the states.

Ms. Hardt moved and Commissioner Chumley seconded approval of the data elements. The motion passed unanimously on a roll call vote.

A motion to adopt an interpretative rule regarding state compensation of sellers that use a certified automated system:

Secretary Wagnon explained that the Executive Committee submitted an interpretative rule, a procedural rule and a Governing Board resolution to provide the framework for states to compensate sellers who use a certified automated system. She said that the resolution establishes that a Model 2 seller can retain 1.5% of the tax collected, not to exceed \$10,000 per state, if they qualify as a volunteer under the same definition as found in the CSP contract. She said that these payments would last for two years after the CAS is installed in the seller's operating system. She said that the interpretative rule explains the Governing Board's authority to establish Model 2 seller compensation and defines "volunteer." In addition Secretary Wagnon said the procedural rule addresses the requirement on states.

Secretary Wagnon moved and Mr. Dobson seconded a motion to adopt the interpretive rule regarding CAS compensation. That motion was approved unanimously on a roll call vote.

Mr. Collins of ADP Taxware voiced his approval and support of this resolution informing the Governing Board that it would be very helpful.

Mrs. Harrell stated that a sentence in the resolution was unnecessary and suggested that it be removed. Secretary Wagnon moved and Mrs. Harrell seconded removal of the second sentence in the second paragraph: "For purposes of receiving the monetary allowance, registration as a Model 2 Seller is deemed to be complete when the Seller's twenty-four month period begins to run." That motion was approved on a voice vote.

Secretary Wagnon moved and seconded by Senator Kenley seconded a motion to adopt the resolution as amended. That motion was approved unanimously on a roll call vote.

Secretary Wagnon moved and Senator Kenley seconded a motion to adopt the procedural rule. That motion was approved unanimously on a roll call vote.

A motion to adopt a rule regarding how much time a Model 1 or Model 2 seller has to begin collecting tax for all states:

Commissioner Chumley explained the Executive Committee's discussions regarding businesses that registered as Model 1 or Model 2 sellers but had not entered into contracts with a CSP or CAS and had not started collecting tax in the member states. She explained the rule she and Secretary Wagnon drafted would require a Model 1 and Model 2 seller to commence tax collection no later than the first day of the calendar month 60 days after registration on the central registration system. She said that the rule would allow a seller to request an extension of time for collection if they were unable to begin within 60 days of registration.

During the discussion about the need to share registration information with the CSPs and the CAS, concern was voiced by Mr. Riesenberger regarding confidentiality. In response, a section was included in the rule requiring the registration system to give sellers notice that their information would be shared and allowing them to say no.

Mr. Dobson requested a sentence setting out a timeline when a registration will be deleted or terminated. Commissioner Chumley suggested the sentence say something to the affect of “Failure to change the business model within X number of days will result in termination.”

Ms. Linda Palmer of New Mexico asked if the wording could be changed to say “collect and remit” which language was inserted.

Mr. Collins stated that it can take longer than 60 days to integrate a company with a CSP or CAS, but that the ability to ask for an extension should work for most volunteer sellers. He said that if someone registers and has a system where they are able to collect in a state, then they should be remitting taxes.

Secretary Wagnon moved and Commissioner Chumley seconded a motion to approve the rule as changed. That motion was approved unanimously on a roll call vote with North Dakota and Nebraska absent.

A motion by Utah to adopt a rule regarding direct mail:

Commissioner Bruce Johnson explained that this proposed rule did would state that the printer or mailer was acting as an agent for the purchaser of the direct mail and did not purchase the postage. Commissioner Johnson explained that this issue came about because postage is listed in the definition of direct mail. He said that the information he has received from the United States Postal Service convinced him that the postage is provided to the purchaser by the post office through the purchaser’s agent and he does not believe that the postage is subject to tax. He also said that this rule takes into account a recent interpretation request concerning whether or not billing statements, invoices, paychecks, etc. are direct mail.

Commissioner Chumley stated that in her opinion the Governing Board cannot by rule change the definition of something in the SSUTA. She said the SSUTA has a definition that explains what is included and excluded and it can’t be changed by the means of a proposed interpretive rule. She stated that if the industry wanted to exempt postage it should be an amendment to the SSUTA.

Commissioner Bruce Johnson further explained that this is not a charge by the seller but by the postal service. He said that the direct mailer is the seller of the mailing/printing service, but not the postage, and he believes this is consistent with the language of the SSUTA.

Ms. Hardt told the Governing Board that Mrs. Hill made her presentation to SLAC. In addition, Ms. Hardt said that direct mail issues were discussed in 2002 in conjunction with the printing industry. She said that she thought that the problem was resolved then, but perhaps more deliberation is needed.

Ms. Melanie Hill explained that she has been tracking this issue for years and found that most states do not tax postage purchased by an agent. She said that in her opinion postage purchased by an agent is not included in the sales price which is why the states are not taxing the postage today even if they have the direct mail definition.

In response to a question from Delegate Doyle, Commissioner Bruce Johnson explained the postal service is not required to collect tax.

Mr. Joe VanDevender explained that a particular agreement states that if you buy the postage and have someone else do your direct mail for you, then you are not taxed, if you pay someone for a taxable service and the postage is included in the price, then it is all taxable. If you order something online from an online company and it is shipped to you, then the shipping is taxed. Commissioner Johnson agreed.

In response to a question from Mr. Peterson, Mr. Gary Yeats stated that the permit holder is responsible for any money not paid. He said that in the case of a bad check or insufficient funds, the client is held responsible.

Mr. Robert Meador and Mr. Bob Yeats each explained why this rule is a good idea.

Commissioner Bruce Johnson moved and Secretary Wagnon seconded a motion to adopt the following rule: "Delivery charges" does not include the actual cost of postage purchased by a Mailing Agent on behalf of a direct mail user. The agency relationship must be disclosed to the United States Postal Service (USPS) prior to or at the time of the postage purchase. Disclosure of the Mailing Agent on USPS forms or attachments thereto is satisfactory evidence of the principal-agency relationship. For example, the Mailing Agent discloses its agency relationship on USPS Postage Statement Form 3602 when entering bulk mail into the mail stream."

Mr. Wilkie stated that he is uncomfortable with all the suggestions that have been made and added that he would not support this amendment.

Mr. Yeats stated that the proposed rule should not include the reference to a specific form number. Commissioner Johnson moved and Secretary Wagnon seconded a motion to delete the form number. That motion passed on a voice vote.

The motion by Commissioner Bruce Johnson to approve the rule failed to receive an affirmative vote of three fourths of the member states and Senator Cook declared the motion lost. Indiana, Iowa, Kansas, North Dakota, Oklahoma, South Dakota and West Virginia voted yes and Kentucky, Minnesota, Nebraska, New Jersey, and North Carolina voted no.

Secretary Wagnon moved and Mr. Tom Gillaspie seconded a motion to refer the issue to the SLAC. This motion was approved on a voice vote.

Quarterly financial report:

Mr. Bob Cox presented the quarterly financial report. He said the Governing Board has a surplus of \$300,382 during the first quarter. He said the ending balance was \$661,996. He said there were two meetings that were not closed yet, which would have impacted this report had they been closed. In response to a question from Mr. VanDevender, Mr. Cox said that the deferred revenue was because the Governing Board could not account for the membership payments from Rhode Island and Vermont until they became members.

A motion to revise the financial reporting rules:

Mr. Cox explained that the financial rules required items to be included in the quarterly financial reports that had more relevance when looked at on an annual basis and that this amendment would delete those from being required on each quarterly report and make them a requirement for the annual report.

Mr. Cox moved and Mr. David Casey seconded a motion to adopt the proposed changes to Rule F. The motion passed unanimously on a roll call vote.

A motion to revise the travel reimbursement rules:

Mr. Cox explained that the current reimbursement rules relied on the use of the federal government's reimbursement rates which worked well when the people being reimbursed were government employees and could qualify for the federal government rates. He said that was not applicable any more and said that the reimbursement needed to be a little more flexible.

Mr. Cox moved and Secretary Wagnon seconded a motion to adopt the proposed changes to Rule J. The motion passed unanimously on a voice vote.

Report on state SST legislative activity:

Maine reported that they don't have anything now. The Governor was reelected and this may pave the way for this to go through but he has to propose this to happen.

Wyoming reported that they have a couple issues to address this legislative session, and did not foresee any difficulty.

Wisconsin reported that the Governor intended to include their Streamline issues in the budget bill.

Tennessee reported that they are hosting a webinar to advertise CSP and CAS services.

Utah explained that they are still wrestling with sourcing problem and they are not optimistic about resolving sourcing issues any time soon. They are trying to remain consistent with the SSUTA as much as possible.

Ohio stated they are on track to resolve their sourcing issues and become full member in January 08.

Washington stated that they intend to introduce legislation and that their Governor's budget included funding to help small businesses.

Arkansas is working with business representatives to resolve a problem. July of 2007 is when they are supposed to become a full member, however they are trying to push it to January of 2008.

New Mexico reported that they met in June and decided to become more active in the project. The goal is to become a full member state in two years.

Georgia, New York, and Virginia had no activity to report.

Idaho reported a slight change in legislature and a new committee chairman. They reported they are trying to change their statutes in 2008.

Proposed interpretation request regarding amnesty from Ms. Jane Page:

Ms. Page explained that this interpretation was to determine whether a seller had to be registered with each state for 36 months after that state became a member. She said that this interpretation was that each seller must be registered with each state for 36 months.

Ms. Page moved and Mr. Wilkie seconded a motion to accept the interpretation. The motion passed unanimously on a roll call vote.

Proposed interpretation request regarding amnesty from Ms. Suzanne Beaudelaire of Ernst and Young:

Mr. Wilkie explained that this interpretation was to determine the impact on an amnesty if a company is acquired by another company. He said that the interpretation was that a company that did not register was not entitled to the amnesty.

Mr. Wilkie moved and Secretary Wagon seconded a motion to accept the interpretation. The motion passed unanimously on a roll call vote.

Proposed interpretation request regarding sourcing prewritten computer software from The Boeing Company

Mr. Wilkie explained that this interpretation was to determine how to source tangible personal property when it can be accessed from multiple jurisdictions or when it can be redelivered to multiple jurisdictions. Mr. Wilkie said that the interpretation was that in both cases the sale could be sourced under Section 312 if there is an exemption certificate claiming MPU is submitted.

Mr. Wilkie moved and Secretary Wagon seconded a motion to accept the interpretation. Mr. Kranz asked if this interpretation was necessary if Section 312 were repealed. After further discussion, Mr. Wilkie withdrew his motion. Mr. Ralph Amon stated that Boeing is okay with withdrawing the interpretation if there is no guidance needed.

Proposed interpretation request regarding bulk serving in the definition of prepared food from Mr. John Nugent:

Mr. Wilkie explained that this interpretation was to determine whether the packaging by a seller of four or more bakery products individually selected by a purchaser and sold for a single price meets the definition of “bulk serving.” Mr. Wilkie said that the interpretation was that packaging 4 or more bakery products individually selected by the purchaser and sold for a single price met the definition of a bulk serving.

Mr. Wilkie moved and Mr. Casey seconded a motion to accept the interpretation. The motion passed unanimously on a roll call vote.

Proposed interpretation request regarding the definition of direct mail from McCarter and English, LLP:

Mr. Wilkie explained that this interpretation was to determine billing invoices, return envelopes and any additional marketing materials are included in the definition of direct mail. Mr. Wilkie said the interpretation was that billing invoices, return envelopes and any additional marketing materials are included in the definition of direct mail.

Mr. Wilkie moved and Mr. Vettel seconded a motion to accept the interpretation. The motion passed unanimously on a roll call vote.

A motion to adopt a rule regarding interpretive rules:

Mr. Wilkie explained the rule offered by CRIC to govern how interpretative rules could be presented and adopted. Mr. Kranz stated that the BAC had a different process in mind for the adoption of interpretative rules. Mr. Peterson stated that the BAC had submitted an alternative version which he failed to send out with the other meeting material.

Senator Cook deferred action on this rule until the March Governing Board meeting.

A motion to adopt a rule regarding compliance petitions:

Mr. Wilkie explained the rule offered by CRIC to govern how compliance petitions presented to the Governing Board should be processed.

Mr. Wilkie moved and Senator Smidt seconded a motion to accept the rule.

In response to a request from Mr. Kranz for additional time to work with the CRIC proposal and a BAC proposal, Senator Cook deferred action on this rule until the March Governing Board meeting.

Discussion of the New Jersey response to the Governing Board letter on fur:

Mr. Rook explained that New Jersey's letter said that they believe they are in compliance with the SSUTA as they relied on the Governing Board's action when Minnesota adopted a similar tax.

Senator Cook reminded the Governing Board that this issue was discussed in Bismarck and they have responded. He said that the Governing Board sent a letter to New Jersey explaining the issue and we now need to respond to their letter. He said we could choose to ignore it with no further comment, but the professionalism needs to be shown and we need to respond.

Mr. Kranz told the Governing Board that in 2002 there was discussion about the adoption of a definition for fur clothing. He said it was rejected at that time because it added complexity to the sales tax administration system. He said that states should not be allowed to adopt replacement taxes whose sole purpose is to avoid a requirement in the SSUTA. He said that the Governing Board needed to find New Jersey out of compliance.

Commissioner Bruce Johnson agreed with Mr. Kranz, however, he said that other states that have special taxes on parking, fuel, liquor, etc. in their states and he doesn't believe that the businesses have any problems. He said that in his opinion New Jersey acted in good faith in following a precedent.

Mr. Riesenberger stated that the SSUTA does not define a sales tax, but assumes that there can be other taxes since it specifically says that states get to choose which taxes are subject to the SSUTA. He said that until the SSUTA defines exactly what is or is not a sales tax it is hard to say whether or not a replacement tax would be prohibited.

Mr. Kranz explained that the SSUTA makes the Governing Board accountable for policing themselves. He said that it would be a failure for the Governing Board not to punish New Jersey and make them responsible for their actions. He said that in his opinion New Jersey's action put them selves in Associate Member status and should not be allowed to vote until they correct this problem.

Commissioner Jerry Johnson agrees that the states need to police them selves, however, he also agrees that there are no specifications in the SSUTA and we should change the language in the SSUTA on replacement taxes to better define it. He said that only after the changes are made, can there be punishment for those not in compliance.

Mr. Vettel urged the Governing Board to proceed with caution.

Senator Kenley stated that he supports Secretary Wagon's suggestion of sending a letter to New Jersey. He said the Governing Board needed to recognize that states have sovereignty.

Delegate Doyle stated that the Governing Board should be consistent and believes New Jersey is in compliance.

Senator Janis Lee respectfully disagreed with Delegate Doyle explaining that she disagreed with the change regarding fur clothing earlier in the meeting. She believes the Governing Board should be more interested in the compact than getting new members. She said the Governing Board should send a letter to New Jersey to change their law and if they don't, that they will be held out of compliance.

In response to a question from Commissioner Jerry Johnson, Secretary Wagon explained the need to let New Jersey's leadership know that there is a problem that needs to be resolved.

Commissioner Bruce Johnson stated that although he can't vote on whether or not they are in compliance, he agrees with the letter.

Mr. Riesenberger explained that if we send New Jersey a letter then we need to send Minnesota a letter as well. Senator Cook agreed with that statement, but said that this issue is with New Jersey, not Minnesota.

Mr. Kranz urged the Governing Board to make a decision on whether or not New Jersey is in compliance. He explained that the business community was not interested in expulsion, but that some action needed to be taken. He said that a letter was not sufficient.

Commissioner Jerry Johnson explained that according to a rule adopted by the Governing Board earlier in the meeting, a state has two years to come into compliance to a rule that has been added or changed.

Commissioner Bruce Johnson said that the letter needed to explain that they may be out of compliance and if they disagree with the conclusion then they are free to dispute it. He said that if we give them 2 years then it is suggesting they are out of compliance and that hasn't been settled yet.

Mr. Rook said that it would be hard for him to say New Jersey is out of compliance if Minnesota is not held out of compliance.

Mr. Cook suggested that this go on the agenda for the next meeting with a report on this subject.

Mr. Noble explained that the Governing Board has defined fur clothing as a way to resolve this issue. He said that we have ignored the fact that states have different things

that they want to tax. He said it sends “a heck” of a message to Congress if we deal with this situation lightly.

Commissioner Johnson suggested that after the letter to New Jersey is sent the Governing Board needs to decide whether further discussion on Minnesota is necessary.

It was said during public comment that what New Jersey did violated the spirit of the agreement. They are not in compliance with the SSUTA.

Mr. Zakrzewski felt the Governing Board was headed in the right direction. He expressed concern regarding the Governing Board’s support of Minnesota’s action and now New Jersey took a similar action. He said that in his opinion, that before the adoption of the definition of fur clothing, he was not sure whether or not New Jersey was out of compliance. He said that a message needs to be sent to not only New Jersey but to Minnesota that this can’t be done anymore.

Commissioner Chumley said that the Governing Board knows what path needs to be taken to resolve this problem. She said that a final hearing should be set for June and it should be added into the letter that New Jersey is out of compliance based on the decision of the Governing Board.

Mr. Kranz stated again that in his opinion New Jersey’s action when they adopted the fur tax was in violation of the SSUTA.

Commissioner Chumley moved and Mr. Cox seconded that the Governing Board send New Jersey a letter informing them that they are out of compliance with the SSUTA and set a final hearing on their compliance. After some discussion Mr. Cox withdrew his second and Mr. Kranz substituted a second.

The motion by Commissioner Chumley failed on a vote of 2 yes and 9 no. Kansas and Oklahoma voted yes and all others voted no. Minnesota and New Jersey abstained.

Secretary Wagon moved and Mr. Cox seconded a motion to direct Mr. Peterson to draft a letter notifying New Jersey of a problem with the fur tax and that there are doubts that have been raised about them not being in compliance. She said that New Jersey should address this issue during their next legislative meeting.

The motion by Secretary Wagon was approved on a vote of 13 yes and 2 no. Michigan and West Virginia voted no, Minnesota and New Jersey abstained, and Nevada and Ohio were absent.

Mr. Kranz moved and Commissioner Chumley seconded a motion to request SLAC to work on a definition of a replacement tax. The motion passed on a voice vote.

Commissioner Bruce Johnson felt a letter should be sent to Minnesota informing them of the action we have taken with New Jersey and they should conform if needed.

Mr. Wilkie responded by saying that if that happens then the Governing Board should look at all the replacement taxes states have adopted.

Commissioner Bruce Johnson moved and Secretary Wagon seconded a motion to send such a letter to Minnesota. That motion failed on a vote of 5 yes and 9 no. Kansas, Oklahoma, Tennessee, Utah and Wyoming voted yes, Minnesota and New Jersey abstained, and North Carolina, Nevada, Ohio, and Vermont were absent.

A motion by SLAC to approved a rule regarding bundled transactions:

Commissioner Jerry Johnson explained how the proposed rule would govern how states are to respond to bundled transactions.

Mr. Harrell moved and Senator Kenley seconded a motion to adopt the revised rule in place of the original rule. That motion passed on a roll call vote with Michigan and North Carolina absent.

Mr. Tom Gillaspie withdrew the Nebraska amendment regarding the definition of a bundled transaction.

A motion by Oklahoma to adopt alternative CSP compensation schedules:

Commissioner Jerry Johnson said that this proposal would allow states to pay a different amount to a CSP than is what is currently required in the contract if the state pays for all sellers, including those who are not volunteers. He said the current CSP contract limits state compensation to a CSP only for their volunteer sellers. He said that if a state wants to pay the CSP for non-volunteer sellers it must pay the same amount as it paid to the CSP for the volunteer sellers.

Commissioner Jerry Johnson explained that a state would have to prove to the Executive Committee that any state's alternative compensation met all of the requirements of this proposal before the President could modify a contract with a CSP.

Secretary Wagon stated that she could not vote for the proposal because she is unsure if the long-term impact might be negative on the other states.

Commissioner Jerry Johnson said that possibly only a few states or even no states will take advantage of this. He said he doesn't believe it will evolve into something with a lot of use; but it should be an option that each individual state is able to offer compensation beyond volunteers.

Senator Cook expressed his support for the amendment saying that even if no current states utilize this, Washington may and if this is something that appeals to them, it might help sway their decision to come onboard.

Delegate Doyle and Commissioner Bruce Johnson both expressed their support for this proposal.

Mr. Prem strongly supported this proposal saying that the Governing Board needed to get more small businesses involved and if they have to pay extra money then this will help those small sellers to cover the costs.

Secretary Wagnon explained the best strategy to help the small sellers that must changed from origin to destination is to cover the cost of CSP.

Commissioner Jerry Johnson repeated his statement that this proposed is an option to help out the small business if it is something that a state wants.

Commissioner Jerry Johnson moved and Commissioner Chumley seconded a motion to approve the alternative CSP compensation rule. That motion was approved with 19 voting yes and 3 voting no. Kansas, Minnesota and New Jersey voted no.

A motion to approve the assignment of the CSP contract with First Data Corporation to Automatic Data Processing:

Mr. Peterson explained that First Data Corporation had sold Taxware to Automatic Data Processing. He said that the CSP contract required approval of the Governing Board before a CSP contract could be assigned to another company.

Secretary Wagnon moved and Commissioner Jerry Johnson seconded that the Governing Board (1) approve the assignment of the existing CSP and CAS contracts with Taxware LP to Automatic Data Processing, Inc. ("ADP"), and (2) authorize the President to enter into assignment agreements or new CSP and CAS contracts with ADP as such action is deemed necessary, dependent in both instances upon the Executive Committee receiving a positive recommendation from the Certification Committee and approving the agreement or contract terms.

The motion was approved unanimously on a voice vote.

Commissioner Bruce Johnson moved and Secretary Wagnon seconded that Mr. Peterson be given the authority to review all documents approved at this meeting to make the technical changes necessary for consistency and give a report on those changes at the next meeting. That motion was approved on a voice vote.

There being no further business, Senator Cook adjourned the meeting at 11:42 am.