

**DRAFT**

**Governing Board Meeting  
Charlotte, NC  
March 16-17, 2007**

**Call to order and attendance:**

Senator Dwight Cook called the meeting to order at 1:00 pm. Mr. Andy Sabol welcomed everyone to North Carolina. All member states were present except Nevada, Rhode Island and Wyoming.

**Approval of Minutes:**

Secretary Joan Wagnon moved and Representative David Drovdal seconded approval of the minutes from the December 2006 meeting. That motion was approved on voice vote.

**Executive Director's Report:**

Mr. Scott Peterson reported that the central registration system had been modified as requested by the Governing Board at their December meeting to allow sellers to affirmatively state that their information could be shared with the CSPs and the CAS. He reported that the staff had been working with the Model 1 and Model 2 sellers on the registration system to get them working toward CSP and CAS contracts, switched to Model 4, or canceled. He said that the termination notice letters being sent to them were working. Mr. Peterson reported that there are 1,046 registered companies. He said that 165 were registered as Model 1, 69 were registered as Model 2, and 812 were registered as Model 4. He said that associate states mostly had only half the number of registrations as full member states. Mr. Peterson reminded the states to not let sellers cancel in their state without also canceling on the registration system. He reported that the IRS had approved the organization's 501 (c)(6) designation and the appropriate tax return was filed.

Senator Cook pointed out that in their material was a letter from the NCSL Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce concerning issues on the agenda. Senator Cook explained that one of the items recently discussed by the NCSL task force was the creation of a Streamlined Sales Tax Academy. Senator Cook introduced former Senator Steve Rauschenberger to explain the concept. Senator Rauschenberger explained that they are going to try to get each legislature to nominate a Republican and Democrat and a legislative staff person to attend the academy. He said the goal is to get more states involved and keep them up to date on who Streamline is and what it is about. He said that if they get a good response they will hold two academies in Denver and Washington, DC, or just one in either of the two locations. Senator Rauschenberger said it was projected to cost between \$200,000 or \$250,000 which he hoped could be financed by donations.

### **Report of the State and Local Advisory Council:**

Ms. Diane Hardt explained that the Council had 11 items discussed at their meeting, including definitions for digital property and health care as well as direct mail sourcing and definitions and replacement taxes. Ms. Hardt explained that direct mail definitions and sourcing were discussed and that it seemed that Ms. Melanie Hill would ask that those issues be withdrawn from the Governing Board agenda for additional work.

Ms. Hardt explained the work done on replacement taxes. She explained that input and discussion from legislators was needed on this topic in order to come to a solution. She said the issues being discussed included: that this is a policy issue legislators should determine, how to tell the difference between a “good” replacement tax versus a “bad” replacement tax, whether or not it was easier to establish other tax safe harbors, whether or not to limit the debate to products defined in the Agreement versus products that are undefined, and the impact on existing taxes, and the impact on new member states.

### **Report of the Business Advisory Council:**

Mr. Rich Prem reported they have 80 members and are focusing their efforts on recruiting more businesses. He explained they are trying to recruit small to mid-sized businesses to make sure they get the view of small sellers on various issues.

In response to a question from Secretary Wagnon about getting the word out on the remaining amnesty period, Mr. Prem said that they would work with tax professionals to remind tax professionals and others that the amnesty is still available.

### **Direct Mail:**

Senator Cook stated that all of the direct mail issues would be discussed at one time.

Ms. Melanie Hill explained that the clients she represents wanted to keep working with the State and Local Advisory Council in hopes of possible action taken in June. She said there was an agreement that the State and Local Advisory Council would conduct a survey asking the states how they tax mailing services.

Mr. Leo Raymond explained that the price paid for postage was a fee for the service of delivering the mail to the person stated on the mail. He said that purchase of postage is not the sale of personal property but a fee for service. Mr. Raymond said that there are many ways to pay for the postage, but it is always for the service. He explained that the money for the postage comes from the owner of the mail and is a fee paid by the owner of the mail to the postal service. Mr. Raymond said that one of the questions being asked was whether the postage is reimbursed. He said that isn't the case, but the postage was paid by the rate payer to the Postal Service. He reiterated a previously stated point that it is a nontaxable payment to the Federal Government. Senator Cook explained that the Governing Board received several letters from the direct mail industry which the delegates should take the time to read.

Mr. Marshall Gaskey explained how they take several items and bundle them together as direct mail. He said direct mail was something that is determined by a company to be sent to a group of individuals. He said that if there are costs added to this, it increases the price and the smaller companies go out of business. Mr. Gaskey said this will result in fewer companies to choose from and then the price will go up even more.

Mr. Jeff Stoudt, of the Printing Industry of the Carolinas, explained that he appreciated the dialog on all the issues. He wanted to inform the Board that his industry is made up of small businesses with 2-800 employees that would have considerably more work and expense associated with some of the issues.

Commissioner Bruce Johnson stated that he had been thinking about the direct mail interpretation request approved by the Governing Board at the December meeting and he believes the decision was wrong. He said that a billing statement was personalized information and doesn't meet the definition of direct mail. He said that billing statements should not be classified as direct mail. He said that the inserts that go along with billing statements would meet the definition of direct mail.

Ms. Sandra Ellis with Mid America Computer Corp. of Blair, Nebraska explained the impact of some of the issues on billing service providers and mailing agents. She stated that she does not believe billing statements are direct mail because it is based on personal information and is not a mailing to a mass audience.

Mr. Craig Rook said the direct mail interpretation approved in December was the result of action taken by New Jersey and that it should be reconsidered. Commissioner B. Johnson said he would be interested in further discussion of these issues and moved that the interpretation be remanded to the Compliance Review and Interpretation Committee for reconsideration. Secretary Wagnon seconded that motion. Mr. Larry Wilkie reminded the Board that there is an Issues Resolution Committee and if Commissioner Johnson disagreed with the Governing Board's decision on this interpretation he should invoke that process.

Mr. Richard Dobson explained that Kentucky considers providing billing statements the provision of a service and as such the letters and the cost of the letters are part of that service. He said Kentucky does not consider this to be the sale of printed material. Mr. Dobson said he believed the interpretation should stand. He said it's not the sourcing that's the problem but the substance of the transaction.

Commissioner Bruce Johnson said that in his opinion the issue is an issue of sourcing and he showed his support of Larry Wilkie's suggestion with the Issues Resolutions Committee. Commissioner Johnson withdrew his motion and Secretary Wagnon withdrew her second. Secretary Wagnon stated that some seemed to be uncomfortable with the December vote and that the issue should go to Executive Committee for further discussion.

Ms. Kristi Magill explained that several states treat this as a service and not the sale of tangible personal property and it seemed to her an issue that needed to be revisited by the State and Local Advisory Council.

Pending further review and discussion of the issue, Commissioner Bruce Johnson and Secretary Wagnon withdrew their motions before the Governing Board related to direct mail.

**Motion by Kansas relating to when databases must be submitted:**

Secretary Wagnon explained that the purpose of this amendment was to require states to have their rates and boundary databases posted no later than fifteen days prior to the end of the quarter for which they are applicable. She said that it is very difficult for a CSP or CAS to incorporate these into their product with so little notice. Secretary Wagnon moved and Senator Luke Kenley seconded a motion to amend Section 305 of the Agreement to require states to post the data bases at least fifteen days prior to the quarter.

Commissioner Jerry Johnson stated that it was brought to his attention that some people were reading the proposed change to be reducing the sixty notice requirement states must provide to sellers of rate changes. Commissioner Jerry Johnson moved and Secretary Wagnon seconded that Section 305 be amended by adding “nothing in this paragraph is intended to eliminate the need to meet the minimum notice requirements in subsections (A), (B), and (C)”. Ms. Cathy Wicks wondered what the distinction was between the notice and actually getting the database and how all these dates fit together. Secretary Wagnon explained that the notice is what is sent out saying that there will be a rate change on a certain day. She said that the notice to sellers must go out sixty days prior to the effective date of the rate change.

Mr. Steve Kranz noted that a seller that uses the rate and boundary database as notice of rate changes was not getting adequate notice with only fifteen days. He suggested that thirty days would work better. Mr. Kranz explained that there is a purpose for the window of time between the notice and when sellers are required to administer it. He said he knows of one company that must reprogram over two hundred computer systems with every rate change that needs more time. He stated that he felt the timing of it all was going backwards. Mr. Bob Meader explained that it was his experience in his company that it takes forty-five days to make the change for a new database. Secretary Wagnon said it would be ok with Kansas if the amount of time was thirty days. Mr. Kranz said he appreciated the movement to thirty days.

Ms. Jane Page said she was a little confused about comparing the tax rate change notice and when databases are posted. She said that South Dakota gives the notice and posts the database sixty days prior to the first day of the quarter to which they are applicable. She said that South Dakota wanted to give everyone as much chance as possible to get it right.

Commissioner Bruce Johnson explained that there currently is no minimum amount of time that the databases must be posted prior to the first day of the calendar quarter. He said he could not understand why people were arguing about the number of days when any number of days was better than what currently existed. Secretary Wagnon agreed with Commissioner B. Johnson that this is not taking days away, but is adding days.

Mr. Tom Gillaspie asked when a state must comply with this change. Mr. Kranz stated that if a company must make changes there should be at least sixty days notice. He said that some companies have a lot of computers to change. In response to a question from Senator Cook about the number of days he wanted, Mr. Kranz said that if he would vote “no” on fifteen days and “yes” on forty-five days.

In response to Mr. Gillaspie’s question, Mr. Peterson said that a state cannot be sanctioned for not complying with an amendment until two years or after the end of one legislative session. In addition, Mr. Peterson said that when the Certification Committee put this issue before the states the year before the states chose not to have a specific number of days. He said there is nothing in the Agreement that says they states have to put it out there until the day before the 1<sup>st</sup> day of the calendar quarter.

Secretary Wagnon asked for unanimous consent to withdraw this amendment and have it placed on the agenda for the June meeting, which consent was granted. Secretary Wagnon asked the states to talk to their IT departments about this issue.

**Motion by Utah relating to member state delegations:**

Mr. Kranz stated that Utah presented this motion on behalf of the Business Advisory Council. He said that the concept came from discussion at NCSL and Governing Board meetings about how to get additional legislators involved in the Governing Board. Mr. Kranz stated that the proposal would require that each state’s delegation include at least one legislator or someone appointed by a Governor. He said that if that person attended a meeting the state would be eligible to vote. Mr. Kranz moved and Senator Orville Smidt seconded a motion to adopt the proposed amendment.

Commissioner Jerry Johnson stated that he is in favor of having legislators on the Governing Board, but without the voting restriction included in the proposal. Mr. Gillaspie expressed concern about the voting provision. He said that a state’s delegation could include a legislator, the appointed tax commissioner and the sales tax director, but if the only person at the meeting was the sales tax director, the state would not be eligible to vote even though the tax director was an official delegate. Mr. Dale Vettel said Michigan has been unsuccessful in recent months getting legislators to attend meetings, although in the beginning they were very involved.

Delegate Doyle stated that it seemed there was general agreement on the goal, but the question was how to achieve the goal. He said we could pursue it with positive motivation such as the Streamline Academy being proposed by Senator Rauschenberger or with negative motivation such as through the proposed amendment.

In response to question from Mr. Peterson about the meaning of “appointed”, Mr. Kranz stated that he meant it to be someone appointed directly by a Governor. Mr. Peterson went on to explain the need for an amendment to allow the comptroller from Texas to be the delegate to the Governing Board. Mr. Peterson stated that the comptroller is neither executive nor legislative, but is the chief tax administrator for the state. The Texas Legislature could not make their comptroller a delegate under the current language in the Agreement.

Commissioner Bruce Johnson suggested that one way to encourage more legislative involvement would be limit amendments to the annual meeting. He said it would be easier for legislators to attend one meeting and missing the one meeting a year where amendments were decided might be good motivation to attend. Senator Kenley asked that the proposal be withdrawn as voting it down would make a statement he doesn't think anyone wants to make. Mr. Kranz and Senator Smidt agreed to withdraw the motion.

**Motion by New Jersey relating to the definition of durable medical equipment:**

Mr. Rook explained that the proposed amendment was designed to give states more options related to single patient use items and supplies and materials, but was not quite ready, and asked that it be placed on the June agenda. He reported that he presented the revised concept to the State and Local Advisory Council and sixteen states supported the proposal, one state opposed, and one state wanted more time to evaluate. In response to a question from Commissioner Jerry Johnson about whether the amendment needed to be re-submitted for the next meeting given that it had been submitted, Mr. Peterson stated that he did not think another notice was required given that all the Agreement requires is that amendments be submitted at least sixty days prior to the meeting at which action could be taken. Mr. Rook asked for unanimous consent that his amendment be tabled until June, which consent was received.

**Amendment to adopt a new section relating to replacement taxes:**

Mr. Kranz stated that Utah presented this motion on behalf of the Business Advisory Council. He said the point of this proposal is to provide the Governing Board with a bright line it can use to determine whether or not a state has created a new tax simply to avoid a requirement of the Agreement. Mr. Kranz said recent state action is being called a loophole by those who oppose Streamline in DC. He said the proposal was still in need of work, as many states seemed uncomfortable with imposing this type of limit on their legislature.

Commissioner Bruce Johnson stated that Mr. Kranz raised a legitimate question on replacement taxes. He said that in his opinion the Agreement does not provide enough guidance to states on what policy options are available in the way of alternative taxes. He said it is clear that a state cannot carve bananas out of the definition of food and tax

them while exempting food, but there is not a clear prohibition on a state from imposing some type of excise tax on bananas.

Commissioner Bruce Johnson stated that a valid concern with this proposal is how future actions of the Governing Board impact taxes long in place. Mr. Kranz stated that he and the states were working on a list of taxes or products and services that would have a safe harbor and could not be impacted without specifically changing the Agreement. He said that there are all types of taxes in a state and they should not have to worry that they might have to get rid of them. Ms. Hardt reported that the State and Local Advisory Council was uncomfortable taking a position on replacement taxes because this is something legislators should decide. If we use language including future definitions, it's more of a blank check.

Mr. Richard Dobson expressed his concern about the retroactive impact of such a provision. He stated that a number of states took actions they thought were permissible at the time that could cause those states to have to leave the Agreement.

Senator Cook agreed with Ms. Hardt that this seemed to be a political and policy issue for which legislators need to work with the State and Local Advisory Council. Mr. Kranz asked for unanimous consent to have this proposal laid on the table until the June meeting, which consent was received.

**Motion by Utah relating to digital products and definitions:**

Senator Cook stated that all of the digital products issues would be discussed at one time.

Commissioner Jerry Johnson said that competing versions of definitions of digital products and digital product rules were on the agenda, but in his opinion the issues were not ready for final action. He said the goal was to provide definitions and rules that would provide clarity for states and those who sell the products. He said the industry needed clarity regardless of whether a state taxed or exempted the items.

Commissioner Johnson said that there was general agreement on the digital product definitions. He said the complexity is around the definition of tangible personal property and the desire by some to eliminate all of the uncertainty with that definition. Commissioner Johnson said that he would like to continue the discussion at the June meeting, including further discussion of the definition of tangible personal property.

Mr. Kranz stated that the definition of tangible personal property was approved by the Governing Board and every state changed its law to comply. He said that it is important for the business community to know that tangible personal property is a uniform and clear definition. Mr. Kranz said that the business community had made a request for an interpretation to the Compliance Review and Interpretations Committee and he hopes they will soon rule on what the definition of tangible personal property means.

Commissioner Jerry Johnson stated that the draft is not complete and that it is premature for the Compliance Review and Interpretation's Committee to decide on the interpretation request. Commissioner Johnson explained that when the tangible personal property definition was adopted everyone knew the states did not agree with each other on what fell into the definition. He cautioned the Governing Board about the disruption that would occur when it tries to reconcile all the things that are or are not tangible.

Commissioner Johnson said that this isn't like when a court or a state tax agency disagrees with a statute meaning. He said that in those cases the legislature can overturn what either has done. Commissioner Johnson cautioned the Governing Board about putting themselves in the position of having tax administrators and a few legislators deciding the meaning of the most important term in sales tax law. He reminded them that what was being asked was for the Governing Board to decide what was and wasn't taxable in 21 states. Delegate Doyle agreed with Commissioner Johnson that legislatures do find themselves in the position of having their words construed differently than intended. He explained that his court often disagrees with what the Legislature thought the law meant and that they have to go back and change it to say what they thought they said in the first place.

Commissioner Johnson explained that if the Compliance Review and Interpretations Committee decided that digital products are tangible personal property, and the Board agrees, almost every state would have to change their laws. He said that this issue should be left up to each state's legislature. He concluded that if the Board has understood everything clearly then it could define digital products separate from tangible personal property. He said he is not comfortable with the Compliance Review and Interpretation Committee deciding if digital products are tangible personal property.

Delegate Doyle stated that as a member of that committee he would like to hear opinions and information from anyone wishing to give it. Mr. Wilkie said as chair of that committee it would be helpful to get feedback from Board members.

Mr. Kranz said that he believes the Compliance Review and Interpretations Committee should decide on the pending interpretation request. He said the definition of digital products needs only minor changes, but the definition of tangible personal property was the problem. He said the states voted on the definition as it stands today and some think it includes digital products and some don't. Mr. Kranz said the Governing Board states had ignored how digital products were treated and the industry needs to know what to do until there is a definition of digital goods. Mr. Kranz asked for feedback from the Governing Board so that the Compliance Review and Interpretations Committee could make a decision at their next meeting. Mr. Kranz said the business community would like the interpretation to be addressed at the same time as the digital goods definition. Ms. Hardt cautioned the Governing Board about making a decision at this meeting as the State and Local Advisory Council had not reviewed the proposed language.

For the Governing Board's information, Commissioner Jerry Johnson explained the discussions on the digital product definitions and rules. He said the three areas being

addressed are digital audio visual works, digital audio works, and digital books. Commissioner Johnson said that the business community expressed concern about things being brought into the tax base if the definitions were not specific enough. He said some issues were complicated, such as the definition of a downloaded movie for permanent use to the end user. He said that the rules would explain how a state would tax or exempt each item.

In response to question from Senator Cook about how many states would have to change their law to be in compliance, Commissioner Johnson said he was unsure but didn't anticipate that Oklahoma would have to change their law.

In response to a question from Ms. Mary Cameron about why "end user" is in the proposal when that seemed to be something that would be decided by the definition of retail sale, Commissioner Johnson agreed, but said that this was a compromise and he was comfortable with the language.

Mr. Terry Ryan from Apple asked why everyone had been working on a definition for digital goods if it was already included in the definition of tangible personal property. He said that in his opinion, digital goods are not part of tangible personal property. He explained that his company had treated these items as outside tangible personal property for five years and changing it now would be difficult.

Commissioner Bruce Johnson stated that when tangible personal property was added to the Agreement it was widely known that states did not agree with its meaning. He said that at the time everyone knew the dispute would have to be addressed, and that he agrees with Commissioner Jerry Johnson and Mr. Kranz that this should be resolved. He believes that the Governing Board needs to fight this battle. He added that it is premature for the Compliance Review and Interpretations Committee to decide the tangible personal property question before the Governing Board adopts a definition.

Commissioner Jerry Johnson explained that the work he has been doing would not change the definition of tangible personal property, but excluding digital goods from tangible personal property once it is defined is legitimate. Mr. Kranz said there are states that say digital goods are not included in the definition of tangible personal property.

Mr. Ryan said, in his opinion, the business community's proposal defines 95% of the digital goods being sold, which should comfort the states. Mr. Kranz suggested that the Governing Board withdraw the interpretation request from the Compliance Review and Interpretations Committee. Commissioner Jerry Johnson stated that he does not believe the Governing Board should get into the habit of handling interpretation requests without action by the Compliance Review and Interpretations Committee. He said this could be addressed through an amendment or rule instead of an interpretation. Senator Cook said that the interpretation request should not be addressed until after the next meeting. Mr. Kranz said he could agree to that timing if the issue is dealt with it at the next meeting rather than after.

Senator Cook stated that he did not believe it was timely for the Compliance Review and Interpretations Committee to address this issue until the Governing Board made a decision on the definition of digital goods. He advised Mr. Wilkie that his committee should not address this issue and that it be added to the work of the Governing Board at its June meeting.

**Motion by State and Local Advisory Council relating to the health care item list appendix:**

Mr. Rook said the State and Local Advisory Council completed categorizing the list of health care products. He said that future health care items would be categorized by the Compliance Review and Interpretation Committee. Mr. Rook moved and Mr. Wilkie seconded a motion to adopt the appendix of health care items as presented with the deletion of "Dialysis Control Media" on page 2. That motion was approved on a roll call vote.

**Motion by the Compliance Review and Interpretations Committee relating to compliance petitions:**

Mr. Wilkie explained the proposed rule would establish a procedure for when someone believes a state is not in compliance with the Agreement. He said the process would follow the same process as used for interpretations: the petition is sent to Executive Director who sends it to the Compliance Review and Interpretations Committee who determines if necessary, and if so, conducts research, holds a hearing and sends a recommendation to the Governing Board. Mr. Wilkie moved and Mr. David Casey seconded a motion to approve the proposed rule. That motion was approved on a roll call vote.

**Motion by the Compliance Review and Interpretations Committee relating to interpretive rules:**

Mr. Wilkie explained the proposed rule would establish a process for the development of interpretive rules once the Governing Board agreed that one was necessary. Mr. Art Rosen said the Business Advisory Council had some concern with the version presented by the Compliance Review and Interpretations Committee. Mr. Rosen said their greatest concern was that membership on the Compliance Review and Interpretations Committee was not limited to delegates to the Governing Board, but that committee is said to represent the Governing Board. He asked that the motion be amended to amend the bylaws to make this requirement. In response to a question from Secretary Wagon about the whether or not Robert's Rules allow two subjects in on motion, Mr. Peterson said no and the notice for this proposed rule did not include any reference to amending the make up of the Compliance Review and Interpretations Committee. He said that an action of this nature should be properly noticed. Mr. Wilkie moved and Mr. Dale Vettel seconded a motion to approve the proposed rule. That motion was approved on roll call vote.

**Motion by Utah relating to notice of state tax rate changes:**

Mr. Kranz stated that Utah introduced this proposal on behalf of the Business Advisory Council. He said the purpose of the proposal was to provide sellers a minimum amount of time to adapt their sales tax systems after a state's tax rate changes. He said last year New Jersey increased its sales tax with fifteen days notice and that it did not give retailers enough time to change their systems. Mr. Kranz said this proposal is less restrictive than the requirement that local governments must provide sixty days notice before rates can change. Mr. Kranz said this proposal says that if a state does not provide thirty days notice of a tax rate change, the state would have to provide liability relief for collecting tax at the incorrect rate. Mr. Kranz moved and Secretary Wagon seconded a motion to adopt the proposed amendment.

Secretary Wagon stated that states should not hold a seller liable for collecting at the wrong rate if the state doesn't provide a reasonable amount of time. Mr. Kranz explained that sixty days would be ideal however for this particular amendment thirty days is reasonable. Commissioner Jerry Johnson expressed his support for the concept but was concerned with the wording. He asked if the retailer could advertise that they are not implementing a tax change for 30 days, even though they could make the change within the time given. Mr. Kranz said this was an abuse and the states should have a mechanism to stop this type of behavior.

Mr. Gillaspie stated that it will be difficult to explain providing liability relief to retailers who cannot make the change in the time when there are retailers who can implement the change right away. Mr. Sabol expressed his concern about treating taxpayers differently. Senator Kenley stated that a minor amendment would make it clear that the liability relief would only be available for those who were charging the rate in effect immediately preceding the rate change. Commissioner Jerry Johnson agreed with Senator Kenley that the current language would require a state to provide liability relief to a retailer regardless of the rate they collected. Mr. Kranz stated that a state could interpret the language correctly to punish those retailers abusing the change. Senator Ron Amstutz urged delegates to go about this carefully. He reminded the delegates that others look at the changes and think it shows instability.

There being no further discussion Senator Cook called for the vote. The motion failed on roll call vote, with Indiana, Kansas, South Dakota and West Virginia voting yes and Iowa, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, and Vermont voting no.

**New Business:**

Mr. Tremaine Smith explained that Washington's legislation goes into effect on July 1, 2008 and they intend to apply for associate state membership. He said they are concerned that they will go six months as an associate and then lose that status for six months waiting for their legislation to go into effect. Mr. Smith asked the delegates to

consider making a change so they could stay an associate until their legislation goes into effect.

Senator Amstutz stated that Washington has taken major strides and that there has been discussion amongst several states on how to move this issue forward. He said there are parallel issues with other associate states. Senator Amstutz explained that he wants to raise the possibility of moving forward by not only adding time but to also figure out how to inch forward on the destination issue. He said Ohio has been talking to other states and would like this brought into the public for a broader discussion.

Mr. Kranz explained that many in the business community disapprove of any changes to the associate state status. He suggested that the answer for Washington is that they wait to petition for membership when they are ready to be a full member. Commissioner Jerry Johnson stated that he too had some issues with an extension, but that Washington made a very good point. In response to a question from Secretary Wagnon about specific concerns, Mr. Kranz replied that states have no incentive to become in compliance if the Governing Board is willing to move the bar for being in compliance.

Senator Amstutz stated that not everyone in the business community shared the same position as Mr. Kranz and that it is important to keep moving toward a solution. Delegate Doyle stated that the states could be put into separate categories given their differences.

Ms. Sherry Harrell explained that her Governor wants to postpone their effective date, but she hopes that Tennessee can still be involved in Streamline. Ms. Harrell stated that Tennessee was in favor of a one year extension because it would help more than just Washington.

Mr. Peterson informed the Governing Board that Nevada would also be in favor of the extension given that their sales tax changes must be approved by the voters at their November 2008 general election. He said there are practical issues around a state leaving the system and then coming back. Sellers, the CSPs and the registration system would all have to change.

Ms. Laura Miller with Ohio Retail Merchants Association said the merchants she represents are having problems coming into compliance with destination sourcing because of the cost of making the changes. She said her association would be in favor of extending the date for meeting this requirement.

Mr. Wayne Zakrzewski of JC Penney said that if the Governing Board is to go forward with this it should do so soon. He explained that it hurt the organization's image when they establish a time table they don't meet. He said that more states are better and the Board should be looking to see what it can do to involve the big states. Mr. Warren Townsend from Wal-Mart commended Washington for their accomplishment. He expressed his concern that expanding dates without states making progress does not help the movement. He said the states should identify each state's issues and help them overcome those issues. He asked that a committee be set up including the business

community, the states not here and others who can come to a solution on this issue. Senator Cook replied that he and Secretary Wagon were working on a list of names for such a committee. Senator Amstutz said it would be nice to have something that can be acted on in June. He said if it can't get it completed, we should have a plan to take action on something additional to hone in on this issue.

**Motion by North Dakota, Indiana, Kansas and West Virginia relating to the passage of Agreement amendments , the agenda for the Governing Board Meetings, and the referral of certain agenda items:**

Mr. Peterson explained the proposed bylaw changes were ideas designed to address the concern expressed by some that the Agreement is a moving target. He said if adopted these changes would insert planned time into the process for adapting and adopting amendments. He said that the first section would require a vote at two separate Governing Board meetings on policy amendments to the Agreement. He said the second section would give people more time to react to issues on the State and Local Advisory Council agenda before they are on the Governing Board agenda. He said the third section would grant the president the authority to send an amendment back to a different stage in the process if he or she thought too many changes had been made to the amendment.

Senator Cook said the issue was on the agenda for discussion purposes and he did not expect to vote. Commissioner Bruce Johnson said he strongly supports the intent behind the proposal but thinks the second section would create serious agenda issues for the State and Local Advisory Council. He said that committee often has the same items on their agenda as is on the agenda for the Governing Board so they can provide guidance to the Governing Board. Secretary Wagon suggested that the first section be changed to make it clear that an amendment to the Agreement would have to receive two affirmative votes, and not just be on the agenda twice.

Mr. Gillaspie expressed his agreement with Commissioner Johnson that the State and Local Advisory Council often recommends minor changes to the Governing Board. Mr. Cox suggested that the first section be changed to say that the two votes must be made at consecutive meetings.

Secretary Wagon moved and Mr. Rook seconded a motion to refer this to the Executive Committee. Mr. Rook urged the members of the Executive Committee to have a proposal done in time for the June meeting. Senator Cook explained this is a result of NCSL speaking to our process and this is an issue that deserves strong consideration for approval. That motion was approved on a majority vote.

**Finance Committee Report:**

Mr. Cox explained the report for the quarter ending December 31, 2006. He said the financial information for many of the meetings was not closed in December and the meeting income and expenses line items were not up-to-date. He said the expenses and

income for the organization were close to what had been projected when the budget was adopted.

Commissioner Bruce Johnson asked about the process for receiving a refund if a state were to not be a member for the entire year. Mr. Cox stated that there are no rules in place concerning refunding dues.

**Letter from New Jersey:**

Mr. Rook explained that he expects New Jersey to repeal its separate tax on fur clothing and adopt the fur clothing definition. He said there are two pending bills in Assembly.

**Report of Nominating Committee:**

Senator Cook reported that the Nominating Committee recommended and the Executive Committee approved the appointment of Mr. Andy Sabol to replace Ms. Loren Chumley on the Executive Committee.

**Discussion on committee to oversee the style and form of documents:**

Commissioner Jerry Johnson suggested that a committee be created to oversee the style and form of Governing Board documents. He suggested that the Executive Committee discuss the formation of the committee and process to make sure Governing Board documents are consistent.

**Study of tax collections resulting from Streamline**

Commissioner Jerry Johnson explained the conversations he had with the National Governor's Association and the Federation of Tax Administrators concerning a study of the amount of tax that may be collected from a voluntary system and a mandatory system. Commissioner Johnson asked that this issue be assigned to the Executive Committee for further study.

**Discussion of the upcoming change in how to source florist sales:**

Ms. Hardt explained that Section 309 B.4 of the Agreement states that states can source the sales of florists however they please until December 31, 2007. She said that on January 1, 2008, the sourcing will then become destination. Ms. Hardt explained that there were states interested in an extension of that date. Senator Cook reported that North Dakota changed its law making the switch effective January 1, 2008.

Commissioner Jerry Johnson asked that the deadline be extended so Oklahoma has time to change their laws. Senator Cook asked the delegates how many states were interested in extending the deadline, and very few states responded. Commissioner Johnson said that regardless if the deadline is extended, rules relating to florists should be put in place quickly. He said he was in favor of extending the deadline for another year to make sure

the software is available, but the rules cannot wait. Mr. Wilkie explained that Minnesota would not be in favor of an extension. In response to a question from Mr. Helton about whether or not a state would be found out of compliance if they do not implement this by January 1, 2008, Ms. Hardt said that only the date would change and that states can do whatever they want prior to that. Commissioner Jerry Johnson expressed his concern about not extending this given that the software issues have not been resolved. He asked if it would be a problem if this was brought back as an amendment and only Minnesota had a problem.

### **Discussion on the Taxability Matrix and the Certificate of Compliance:**

Ms. Harrell explained that the taxability matrix and certificate of compliance needed to be updated to account for changes made to the Agreement in 2006. She suggested that the process of updating the two documents be coordinated by the Executive Director as an administrative duty. She said there is no reason for Governing Board approval as long as the updating process includes a review by the states. Mr. Vettel stated that he was ok with the concept of changing the form administratively however he expressed some concern about changing the contents administratively. Ms. Harrell and Mr. Peterson both agreed that content was what would be changed. They said the plan is to make the changes and give it to the Compliance Review and Interpretations Committee for review. In response to a question from Mr. Vettel about the supplemental matrix, Ms. Harrell explained that this process would only apply to the required tax matrix and not the supplemental matrix. Commissioner Jerry Johnson said he could support changes being made administratively however he stated that any major changes should be presented to the Governing Board. The Governing Board approved administrative changes to the taxability matrix and the compliance checklists without a vote from the Governing Board.

### **Discussion on state efforts to market CSP's and CAS's:**

Mr. Rory Rawlings explained the need to increase the effort made to market the CSP's. He reminded the delegates that there are over 1,000 registered sellers trying to collect sales tax across state lines that could use the assistance of a CSP. Mr. Rawlings said that between the business community, CSP's and the states, a reasonable marketing plan could be implemented. Mr. Charles Collins agreed with Mr. Rawlings that more needed to be done to market Streamline. He said the states need to become more involved. He explained the pilot Webinar done in Tennessee. He said it would have been better to have more participation but the process worked well. Mr. Collins suggested a committee be formed to work with the providers, Mr. Peterson, and business community to come up with ideas. He reported that he and Mr. Peterson have been working together to market Streamline on the website. Ms. Kristi Magill agreed with what Mr. Rawlings and Mr. Collins said but there are many businesses with intrastate issues that face increased workloads. She said the states need to do more to address intrastate issues. She expressed her full support of the concept. Mr. Fred Nicely pointed out that they want to work with the CSP's and will do whatever they can to help this along. He said that there have been efforts to market the CSPs made but they haven't had enough results. Mr.

Peterson explained that he believes the CSP's services can meet everyone's needs but there are not enough CSP's to meet all the need.

**New Business:**

Mr. Scott Mason with Lowe's gave a presentation related to a new definition they would like added to the Agreement. Mr. Mason said the definition was for products that carry the "Energy Star" label from the Environmental Protection Agency. He said that his company and their coalition want to start working with states to allow a sales tax holiday for these products.

**Adjournment:**

Commissioner Jerry Johnson moved and Mr. Mike Wasser seconded a motion to adjourn the meeting. That motion was approved on a voice vote and at 11:12 a.m. Senator Cook declared the meeting adjourned.