

**Minutes of the  
Streamlined Sales Tax Governing Board**

**June 18, 2008**

Secretary Joan Wagon called the meeting to order at 8:00am. All member states were present except Utah.

Secretary Wagon welcomed Representative “Buddy” Lovell of Arkansas and Mr. Manoj Shanker of Kentucky as new delegates to the Governing Board.

**Long-Range Planning Issues:**

Secretary Wagon explained the report on long-range planning. She said the goals include vendor compensation, the small seller exception, and the need to better manage the agenda.

Secretary Wagon reported that Commissioner Bruce Johnson would chair the Issues Resolutions Committee and Mr. Robert Thompson and Ms. Mary Cameron would serve on the committee. Ms. Erica Mani and Mr. Tom Gillaspie volunteered to serve on the committee.

**Executive Director’s Report:**

Mr. Scott Peterson reported that the CSP recertification process was complete and the CSP contracts were successfully re-negotiated. He said the only significant change was in the bond requirement. He said each CSP would be required to only post the minimum if they maintained adequate and verifiable internal controls.

Mr. Peterson reported that since the last Governing Board meeting he had spoke at the NCSL Spring Forum, he and Carolynn Iafrate spoke at the IPT sales tax school, and he and Ms. Loren Chumley spoke at the FTA Annual Meeting.

He also said that the CSP recertification process could not have been completed were it not for the effort of the Core Audit Team. He congratulated the states that provided auditors.

**Approval of the Minutes:**

Delegate John Doyle moved the approval of the minutes from April 2, 2008. There being no objections, the minutes were approved.

**Financial Report:**

Mr. Peterson reported that less money was being spent than expected, but we are also making less money on meetings than expected. He said the Finance Committee was looking for certificates of deposits as there is too much money sitting in the bank.

Secretary Wagon explained that the Executive Committee is recommending that the FY09 budget be amendment to add \$100,000 for a federal lobbyist for Streamline. She moved that motion, which passed on a voice vote.

### **Certification Committee Report:**

Mr. Gary Centlivre reported that the Certification Committee was working on the CSP review, the possible elimination of the Information Report (IR), and the central registration system. He said the committee proposed to eliminate the IR for Models one, two and three with a requirement that vendors and sellers provide the data needed at the time of audit. He said they also proposed adding a line on the SER for food/drug as well as 6 other items that would have been on the IR. He said the discussion on the central registration system related to what would be required of the system with federal legislation. He said there was discussion about letting sellers register with SST and select only the states where they conduct business.

### **Audit Committee Report:**

Mr. Peterson said the Audit Committee had been working on the audit of the CSP's and how to improve the process. He said they were also developing the process for state audits of Model 2 Sellers. He said the committee recommended that a formal letter be sent to the CSP after the tax compliance audit in order to provide closure.

### **Compliance Review and Interpretations Committee (CRIC) Report:**

Delegate Doyle reported that it was the opinion of a majority of the CRIC that New Jersey is out of compliance because of their failure to adopt the telecommunication definitions and to tax accordingly. Delegate Doyle moved that the Governing Board adopt the report of the CRIC (CM08003) and to find New Jersey out of compliance for failure to:

1. Adopt the telecommunications service definition and not tax services which are specifically excluded in the definition under the definition of telecommunications service.
2. Adopt a definition for ancillary services and consider such services to be telecommunications service under the state definition.
3. Adopt the definition of international telecommunications services and not tax those services under the interstate definition.
4. Adopt the definition of and sourcing for prepaid wireless calling service.
5. Not include thresholds, such as exempting coin-operated calls only for the local calling rate when the SSUTA contains a definition for coin-operated telephone service that includes all such services whether they are local or not.

He said that it be the determination of the Governing Board that in their totality, the above constitute a lack of substantial compliance, and that the Governing Board's finding does not include the state's excise tax on clothing with fur.

Mr. Dale Vettel and Mr. Larry Wilkie explained that they voted against this decision on the CRIC because of they believe the standard of review found in the SSUTA is substantial compliance. Both said they believed New Jersey was in substantial compliance. Mr. Larry Wilkie stated that more than a few states would fail the test proposed for New Jersey.

Delegate Doyle stated that while he understood and agreed with Mr. Vettel and Mr. Wilkie on the concept of "substantial compliance," New Jersey's language is completely different than what is in the SSUTA. Mr. Andy Sabol stated that he felt there was an expectation that states adopt the uniform definition and New Jersey didn't. He said a state becoming a new member would be expected to adopt the correct definition.

Mr. Craig Rook explained that while New Jersey does not have the same definitions, he believes New Jersey is in compliance because their current definitions mean the same thing. Ms. Deborah Bierbaum questioned whether the uniform definitions mean anything if a state can be in compliance without them. She said the uniform definitions create simplification for her industry.

Mr. Steve Kranz stated that he felt the CRIC's determination and recommendation should also include New Jersey's excise tax on fur. He said that it was his understanding and the understanding of many others that once there was a definition of fur clothing, that Minnesota and New Jersey would repeal their excise taxes and tax fur in their sales tax. He said Minnesota took the right approach, but not New Jersey. He said it was his opinion that they are also out of compliance because of this issue.

Mr. Frank Julian said that New Jersey also imposed a use tax on fur that is at a different rate from the sales tax and the SSUTA prohibits that activity.

Delegate Doyle asked that his motion be divided between adoption of the CRIC report and whether or not New Jersey was out of compliance. The motion to accept the CRIC report passed on a voice vote.

Mr. Kranz moved to amend Delegate Doyle's motion to add: "(6) Adopt the definition of clothing with fur and repeal its excise tax on fur." Delegate Doyle stated that Mr. Julian's comments were not included within CRIC's review and it was not appropriate to find a state out of compliance without that review. Delegate Doyle stated that while he strongly opposed Mr. Kranz' motion to change the language he would support eliminating the reference to fur.

Mr. Rook said that the definition for clothing with fur was placed in the SSUTA in December 2006. He said that they are not out of compliance until the Jan. 1, 2009.

Senator Dwight Cook asked for a clarification on the timing of the definition and the time given a state to come into compliance. Mr. Peterson explained that the fur amendment was added to the SSUTA in December 2006 and states had to be compliant on January 1, 2009.

In response to a question from Mr. Kranz about how the fur tax was imposed and if there were different rates, Mr. Rook explained that it was similar to the Minnesota replacement tax and the rates were not relevant as it was not a sales tax. Mr. Kranz stated that Minnesota didn't enact their tax like New Jersey. Mr. Wilkie stated that while Mr. Kranz was correct that the two states may have taken a different approach, it is a moot point as they have until Jan. 1, 2009.

Ms. Maureen Riehl reminded the Board that this is the political season and it's the little nit-picky things that are important. She said that New Jersey needs to correct the problem sooner rather than later.

Mr. Julian stated that the use tax is not under the two year implementation exception and he could not understand how anyone could say they are not out of compliance. He said he tried to voice this position on the CRIC call and was not allowed.

Mr. Tom Gillaspie stated that if the business community doesn't feel that CRIC did their job maybe the issue should go back to CRIC. Delegate Doyle said that CRIC did consider the fur tax and did not find them out of compliance. He said that he took great pain to make everyone was allowed to speak and in no way was Mr. Julian stopped from stating his opinions.

Mr. Kranz stated that he would like to withdraw his original motion and substitute a motion that CRIC investigate New Jersey's compliance regarding fur and reach a determination regarding New Jersey use tax on fur.

Secretary Wagnon ruled that he cannot substitute a motion for one withdrawn.

Commissioner Jerry Johnson moved a substitute motion that the Governing Board find consistent with the CRIC recommendation without the sentence excluding the fur tax. He said that Governing Board would be silent on the fur tax and he would then like to make a motion to refer the fur tax issue to CRIC.

Mr. Dave Casey stated that he was opposed to Commissioner Johnson's motion. He said he would prefer to vote on the issue as stated because he is concerned that if the Governing Board's motion is changed it will have the effect of changing CRIC's recommendation. Commissioner Jerry Johnson stated that he did not agree that it would change CRIC's recommendation. Delegate Doyle agreed that he doesn't think it would change CRIC's recommendation. Commissioner Jerry Johnson's motion failed on a roll call with seven states voting yes and ten states voting no.

That part of Delegate Doyle's original motion related to whether or not New Jersey was out of compliance with the SSUTA passed on a roll call, with fifteen states voting yes and Michigan and Minnesota voting no.

Commissioner Jerry Johnson moved that CRIC be directed to examine the issues surrounding New Jersey's fur tax, specifically the use tax issue, and their compliance with the SSUTA and to report their findings to the Governing Board at the September meeting.

Mr. Joseph VanDevender expressed his concern with examining an issue is not until January 1, 2009. Mr. Rook reiterated his position that New Jersey is in compliance with this issue. Mr. Kranz stated that he could see no harm in referring this issue to CRIC as the issue of use tax needs to be evaluated.

Commissioner Johnson's motion passed on a voice vote.

### **Sanctions for New Jersey:**

Secretary Wagon explained the recommendations of the Executive Committee concerning the sanctions that would be imposed on New Jersey for being out of compliance with the SSUTA. She said the Executive Committee recommends the following sanctions be imposed on the State of New Jersey:

1. Effective January 1, 2009, the State of new Jersey shall be ineligible to vote on:
  - a. Amendments to the Agreement;
  - b. Interpretations of the Agreement;
  - c. Determination of whether a petitioning state is in compliance with the Agreement pursuant to Section 804 of the Agreement; and
  - d. Any other matter which may be acted on by the Governing Board.
2. Effective July 1, 2009 sellers registered under the Agreement shall be relieved of an obligation to collect sales and use taxes on sales into New Jersey which exists solely because of such seller's registration under the Agreement. This provision shall not relieve a seller of any obligation to collect sales and use taxes, which might otherwise exist under applicable law, or to remit taxes that are collected.
3. The Governing Board shall consider additional sanctions which may be appropriate at the first meeting of the Governing Board held after January 1, 2010.
4. The sanctions imposed herein shall immediately terminate and be extinguished upon a finding by the Compliance Review and Interpretations Committee (CRIC) that the State of New Jersey has come into compliance with the provisions of the Agreement. A finding by CRIC on this matter may be appealed by the State of New Jersey to the Governing Board pursuant to a schedule established by the Executive Committee.

Mr. William Riesenberger questioned the language in section 4 of the proposal that seemed to assign the determination of compliance to the CRIC. He stated that it seemed to conflict with the SSUTA which gives that authority to the Governing Board. Secretary Wagon stated it was a debatable point given that CRIC works for the Governing Board. Secretary Wagon moved that the proposed sanctions on New Jersey be adopted.

Senator Cook moved to amend the motion to add “as approved by the Governing Board” after “CRIC” in section 4 and to delete the last sentence in section 4. He said this would add additional steps to the process but eliminates any question about using the proper process. Senator Cook’s motion passed on a voice vote.

In response to a question from Mr. Vettel whether “sellers” in section 2 means all sellers or only volunteer sellers, Mr. Peterson stated that it applies only to volunteer sellers as the Governing Board does not have authority of sellers with nexus and the CSP’s are required by the contract to collect in New Jersey but only if the volunteer seller directs them to do so. In response to a question from Mr. Tom Atchley whether these sanctions would include the fur tax, Secretary Wagon stated that it only applied to what has currently been determined and that if the state is found out of compliance because of fur the Governing Board would have to go through the process again.

In response to a question from Mr. Kranz about when the obligation to collect would start once the state was in compliance, Secretary Wagon said there is currently a 60 day notice requirement in place. Ms. Bierbaum said she shared Mr. Kranz’s concern. Ms. Jane Page moved to add “once New Jersey has been found in compliance by the Governing Board sellers registered under the SSUTA must begin collecting New Jersey sales and use tax on the first day of the calendar quarter after 60 days notice.” Mr. George Phillips and Commissioner Jerry Johnson both said there was enough time between this meeting and when this sanction would go into effect to wait and address it at the next meeting. Ms. Page withdrew her motion.

In response to a question from Mr. Rook about how CRIC and the Governing Board would evaluate New Jersey’s legislative actions before the sanctions went into effect, Secretary Wagon stated that CRIC would meet as soon as notified by New Jersey and the Governing Board would meet by teleconference.

Mr. Vettel stated that subsection 1 d had the effect of putting New Jersey in a status that was less than the status enjoyed by associate states and moved that it be deleted. Mr. Kranz stated that he felt it was appropriate that a state that has fallen out of compliance be treated differently than an associate state and was opposed to the motion. The motion by Mr. Vettel passed on a voice vote.

In response to a question from Mr. Kranz about the amount of time allowed before the sanctions went into effect, Secretary Wagon stated that the New Jersey Legislature was in session and needed the time to pass the bill.

Secretary Wagon’s motion, as amended, was unanimously adopted on a roll call vote.

### **State and Local Advisory Council (SLAC) Report:**

Ms. Sherry Harrell reported on the meetings of the credit issues task force and the sales price group. She said the sales price group was working to more clearly define 'sale.' She said work was being done on uniform language for hurricane holidays. She asked the Governing Board how they wanted SLAC to pursue the sourcing of florist sales. Secretary Wagnon asked that SLAC draft language that for florist sales being sourced according to the SSUTA and with them being sourced under an origin method.

### **Replacement Taxes:**

Secretary Wagnon stated that this was the second vote for this amendment (AM07005). Ms. Harrell stated that the proposal includes "(other than tangible personal property)" and needs additional work as tangible personal property is not a product definition. She moved to refer it to SLAC for review. Mr. Sonny Brasfield again expressed his concern that he is not comfortable unless he knows how this will impact taxes that are not currently impacted by Streamline, but could in the future by amendments to the SSUTA. The motion to refer this to SLAC passed on a voice vote.

### **Direct Mail:**

#### **CRIC Interpretation:**

Mr. Vettel explained the interpretation request from Mr. Mark Nebergall concerned whether the creation, printing and mailing of a billing statement would be direct mail in states that treat the activity as data processing or a billing service. Ms. Sherry Harrell expressed concern about defining something dealing with sourcing when the sourcing and the definition need to be uniform or the result would not be uniform sourcing. She said that because some states treat all forms of printing as a service and states will have different interpretations of tangible personal property. Mr. Phillips agreed with Ms. Harrell and said it was important not to have different interpretations of tangible personal property. Mr. Richard Dobson said this issue probably already occurs as each state now make independent decisions as to whether a particular transaction is tangible personal property or a service.

Delegate Doyle moved adoption of the CRIC recommendation (IO08002). The motion to approve this recommendation passed on a roll call vote with sixteen yes votes and Michigan and Vermont voting no.

#### **Direct Mail Sourcing:**

Ms. Sherry Harrell explained that AM08006 would amend the direct mail sourcing section in the SSUTA to apply to printing advertising and promotional direct mail, including definitions for both terms. Ms. Magill stated that this proposal was drafted based on a 2006 CRIC ruling which ruling did not include the assumptions recently

evaluated by CRIC. She said BAC opposed this proposal. Ms. Harrell moved the adoption of AM08006. That motion failed on a roll call vote with ten states voting yes and eight states voting no.

Ms. Magill explained that AM08007 was developed after the April Meeting based on the assumption CRIC would rule in the way they did. She said the BAC felt this was the least invasive approach while still achieving industry needs. Ms. Ellen Thompson said Nebraska opposed this approach and expressed concern changing “shall” to “may”. Ms. Leigh Walton asked the Board to think about who is likely to use this amendment. She said a lot of printers and mailers will use the direct pay form. She said that a lot of printers are ‘mom and pop’ and this proposal puts everyone on an equal playing field and she supports this amendment. Ms. Robin Corrigan and Ms. Harrell said their states opposed this amendment. Mr. Mark Nebergall said there should be an exception stated for those states that need it. Ms. JoAnn Rock said she appreciates all the work done on direct mail and she supports this amendment because it makes things less complex for the mom and pop shops. Secretary Wagnon moved the adoption of AM08007. That motion failed on a roll call vote, with eight states voting yes and eight states voting no.

Mr. Russ Brubaker moved to adopt AM08011A01. He said that this would allow a state to elect to use origin sourcing for intrastate sales of direct mail. In response to a question from Mr. Gillaspie, Mr. Brubaker said it should not affect a destination state such as Nebraska as subdivision D says that one state’s decision to source intrastate sales does not impact the tax that might be owed to a state where direct mail is delivered. Mr. Fred Nicely stated that while the business community does not want another sourcing proposal they do appreciate the provision that says there will be no additional use tax. Ms. Magill stated the BAC did not vote to support the proposal however they do not oppose it. Mr. George Phillips said there are real problems dealing with interstate printing. Ms. Harrell and Ms. Corrigan said they support the amendment. The motion passed on a roll call vote, with Vermont voting no.

Ms. Magill and Ms. Harrell withdrew AM07001 and RP07016A01.

### **Delivery Charges:**

Ms. Magill said AM08005 and AM08008 need to be combined and moved that they both be referred by to SLAC. That motion was approved on a voice vote.

### **Sales Price:**

Ms. Magill explained that AM08009 was intended to provide the direct mail industry with notice when a state changes its tax imposition on direct mail as a result of adopting Streamline definitions. She said this proposal would require that there be clear legislative intent to impose tax on direct mail. She said that this is the most critical issue for the direct mail community. In response to a question from Mr. Bill Riesenberger, Ms. Magill said the April 2, 2008 date was relevant when this issue was before the Governing Board in April but could be changed.



Ms. Corrigan asked if this amendment would affect a state that splits delivery charges and direct mail and taxes one and not the other. Ms. Magill said she didn't think the amendment would impact that situation. Mr. Phillips wondered if a state would be out of compliance if it didn't express legislative intent. Ms. Magill stated the proposal does not amend the definition of compliance.

Ms. Magill moved the adoption of AM08009. Ms. Sherry Harrell reported that there was very little support for this amendment in SLAC. She said some felt it was an attempt to have a definition with two different meanings. Mr. Kranz responded that this is a rule within a definition and not a definition. Mr. Brubaker said that Washington strongly supports this amendment. Mr. Richard Dobson said he in full support of transparency, but this seemed to be a back door way of questioning the wishes of the legislature. He said it Kentucky could not support something that required the legislature to prove its intent. Mr. Tom Gillaspie agreed with Mr. Dobson and added that this should have a legislative response. Secretary Wagnon said she understood what was trying to be accomplished, but it seemed strange to her to ask the legislature to pass something and then come back and say they really meant what they said.

Mr. Mike Wasser said it is a real problem for the industry to know what a state intends when it adopts a definition and there is value in this approach. He said that Streamline is a unique 'legislative animal'. Ms. Leigh Walton said the industry is seeking transparency but with the confusion with this proposal she asked for a chance to come back with a solution. Mr. Leo Raymond said the industry needed to know whether a state was changing how they tax their industry, and said they need a way for the states and the business community to come together with a solution. Secretary Wagnon stated that she believes that the industry deserves a solution to this issue however she needs to make sure that there is indeed a solution. Commissioner Jerry Johnson stated that it's appropriate to address this issue, but we need to be careful what we are asking of a legislature. Mr. Kranz said the goal is to ask a state to prove its legislature intended to impose the tax if they pass a bill. Mr. Brubaker said that legislative intent is expressed differently and not at all in some states, which is part of the problem. He said this proposal provides a method that is clear. Secretary Wagnon said this issue would be deferred until September and Richard Cram, John Doyle, Mary Cameron, Robin Corrigan, Russ Brubaker, and Sherry Harrell would work on the language.

#### **SSUTA Amendment Sponsorship:**

Secretary Wagnon explained that AM08003 would allow the SLAC and BAC to sponsor amendments. Mr. Kranz moved to defer this to the next meeting.

#### **Amendment Notice Requirement:**

Secretary Wagnon explained that AM08004 would reduce the SSUTA amendment notice requirement from 60 days to 30 days. Mr. Riesenberger said he was not opposed, but

unsure if there was a reason for the change. Secretary Wagnon moved adoption of this amendment. The motion was approved unanimously on a roll call vote.

**Bundled Transactions and Software Maintenance:**

Ms. Sherry Harrell explained that AM08010A01 added software maintenance contracts to the definition of a bundled transaction, but asked that it be deferred to the September meeting.

**State Tax Rate Change:**

Ms. Harrell explained that AM07030A02 provided additional relief to sellers when a state fails to provide thirty days notice of a tax rate change. Ms. Harrell moved the adoption of the amendment. The motion was approved on a roll call vote with Arkansas abstaining. Secretary Wagnon stated that this is a policy amendment requiring a second vote and would be on the September agenda for a second vote.

**Library of Definitions:**

Commissioner Jerry Johnson explained that AM07032A01 is an attempt to keep definitions constant and clear. He said the complexity in some of the definitions created unnecessary confusion. Commissioner Jerry Johnson moved the adoption of the amendment. The motion was approved unanimously on a roll call vote.

**Privacy Amendment:**

Commissioner Jerry Johnson explained that AM08012 came from the CSP contract renewal process and a discussion about what privacy standard was required of a CSP. He said the amendment needed to be deferred to September.

**NEW BUSINESS:**

Secretary Wagnon congratulated Mr. George Phillips on his retirement at the end of June. Mr. Phillips thanked the Board and said he enjoyed his time working together.

**Finance Committee Rules:**

Representative Pete Anderson moved to suspend the rules for the purpose of adding RP08006 to the agenda and adopting the financial rules. Mr. Peterson explained that the changes made the Board's financial rules coincide with practice. The motion to suspend the rules and adopt the revised financial rules was approved on a voice vote.

**Setting the Board's Agenda:**

Secretary Wagnon moved that the rules be suspended to add RP08001 to the agenda and refer to the Executive Committee. She explained that the proposal would allow the

president to determine what went on the Governing Board's agenda. The motion was approved on a voice vote.

**Issues Resolution Process:**

Commissioner Jerry Johnson moved that the rules be suspended to add RI08001 to the agenda and refer to the Executive Committee. He said the proposal would revise the issue resolution process. That motion was approved on a voice vote.

**Amendment Notification Process:**

Commissioner Jerry Johnson explained that RP08005 would provide notice to states of the issues they need to act on each year. Secretary Wagnon referred this to SLAC.

**Determination of Sanctions:**

Secretary Wagnon stated that RP08004 would establish a process for determining the appropriate sanction when a state is found out of compliance. She said it is important for the BAC and the states to be part of the discussion on the proposal. Commissioner Jerry Johnson moved to suspend the rules and refer this to the Executive Committee. The motion was approved on a voice vote.

**Returns and Remittances:**

Commissioner Jerry Johnson explained that AM07036A03 and AM07036A02 were two methods for a broader use of electronic returns. He said he would bring this back at the next meeting. Ms. Harrell asked that as many people as possible be on the calls to help with solutions.

**Announcements:**

Delegate Doyle reported that the next meeting will be in Charleston, WV and they have white water rafting planned for those who would like to participate.

The meeting was adjourned at 3:00pm.