

**Governing Board Meeting  
Charleston, West Virginia  
September 4-5, 2008**

President Joan Wagon called the meeting to order at 1:45pm. She thanked Delegate John Doyle and Secretary Virgil Helton for West Virginia's hospitality.

Mr. Scott Peterson called the roll of Member States. All states were present except Rhode Island.

President Wagon explained the agenda and asked for a motion to approve the minutes from the June 2008 meeting (MM08003). Mr. Joseph VanDevender moved the adoption of the June 2008 minutes. That motion passed on a voice vote.

**Referral of Introduced Proposals to Committees/Councils for Study:**

Representative Mark Falzone thanked Utah for introducing an amendment on behalf of Massachusetts to define luxury clothing (AM08018). He said he received support for the proposal from Wal-Mart and Target and had positive discussions with JC Penney. He said he would continue discussions with the National Retail Federation and Macy's. President Wagon referred the proposal to the State and Local Advisory Council (SLAC).

President Wagon referred the following proposals to the noted committees:

- Kansas bylaw amendment relating to the Nominating Committee (BL08001) – referred to the Executive Committee
- Kansas amendment relating to a local government representative representing a state on the Governing Board (AM08022) – referred to SLAC
- Ohio amendment relating to origin sourcing and direct pay (AM08013) – referred to SLAC
- Oklahoma amendment relating to replacement taxes (AM08014) – referred to SLAC
- Utah amendment relating to the sourcing of direct mail by small sellers (AM08015) -- referred to SLAC

Ms. Sherry Harrell moved that AM08016 be moved to the appropriate place on the current agenda to be discussed at this meeting. That motion was approved on a voice vote.

President Wagon deferred the following to a later meeting:

- Utah amendment relating to sourcing direct mail (AM08017)
- Utah definition of bundled transaction (AM08010A01)
- Washington amendment adding a new section relating to notice requirements for direct mail legislation (AM08019)
- Tennessee amendment relating to the definition of "Delivery Charges" in the Library of Definitions (RP08007)

**Final Action on Amendments from Previous Meeting:**

Commissioner Bruce Johnson said that as a matter of process whenever the Governing Board has a first vote on an amendment it should understand whether or not there is a requirement for a second vote.

Mr. Russ Brubaker moved that AM08011A01 previously approved by the Governing Board be approved a second time. That motion was approved on a roll call vote with sixteen states voting yes, Minnesota and New Jersey abstaining, and one state absent.

Delegate John Doyle moved that the Compliance Review and Interpretations Committee's interpretation IO08002 previously approved by the Governing Board be approved a second time. That motion was approved on a roll call vote with eighteen states voting yes and one absent.

Ms. Sherry Harrell moved that AM07030A02 previously approved by the Governing Board be approved a second time. That motion was approved on a roll call vote with eighteen states voting yes and one absent.

Commissioner Jerry Johnson moved that AM07032A01 previously approved by the Governing Board be approved a second time. That motion was approved on a roll call vote with seventeen states voting yes and two absent.

**Annual Report:**

President Wagon summarized the Board's activity in the last year as outlined in the Annual Report.

**Report of the Finance Committee:**

**FY 2008 Financial Report:** Mr. Peterson explained that the Governing Board had a surplus of \$294,803 at the end of FY2008. He said income came in as expected, but expenses were \$453,522 below budgeted levels. He explained that the only major budgetary development in FY 2008 was the addition of \$100,000 for registration system enhancements. He said that only \$40,000 was spent because of the length of time it took to develop the changes. In response to a question from President Wagon, Mr. Peterson explained that the financial report was currently being audited.

**FY2009 Budget:** Mr. Richard Dobson moved and Representative Pete Anderson seconded a motion to amend the FY2009 budget to:

1. Increase the opening balance by \$449,804 to reflect the actual ending balance of FY2008.
2. Show that \$106,545 of member dues were received in FY2008 and held in reserve for FY2009.
3. Reduce meeting income by \$52,500 to reflect fewer meetings in FY2009.

4. Increase by \$10,000 in each of the two travel categories, for a total of \$20,000) to reflect increases in airline fares and travel for Executive Committee meetings.
5. Reduce meeting expenses by \$3,750 to reflect fewer meetings in FY2009 and no income from those meetings.
6. Add a new line item for a study on uncollected use tax in the amount of \$50,000.

The motion to amend the FY2009 budget was approved on a voice vote.

**FY2010 Budget:** Mr. Dobson explained that the FY 2010 budget proposal was very similar to FY2009. He said the estimated revenue should be roughly the same as FY2009, with estimated expenditures projected to increase by \$20,537. He said the budget anticipates an operating deficit of \$227,379 for the fiscal year, which will be covered by funds held by the Governing Board that are in excess of required balances. Mr. Dobson said the significant features are:

- Member dues are the same as in FY2009 and should achieve the goal of having an ending balance equal to 50% of operating expenses.
- Meeting income and expenses are reduced from previous levels to reflect two Governing Board meetings and one State and Local Advisory Council meeting during the year.
- Staffing levels will remain the same as they were in FY2009.
- Travel expenses will remain the same as in the revised FY2009 budget.
- “Other” contractual services will remain as in the revised FY2009 budget to reflect the hiring of a lobbyist.

Mr. Dobson moved the adoption of the proposed budget for FY10 and Representative Anderson seconded. The motion was approved on a voice vote.

**Small Seller-Compensation Task Force:**

Mr. Harley Duncan summarized the work of the Small Seller-Compensation Task Force. He said they will meet again in person some time in November and are trying to develop a list of questions and issues and that will hopefully flush out some of the answers.

**Executive Committee:**

President Wagnon reported that the Executive Committee formed an Advocacy Committee consisting of the officers and the past presidents who will put together a strategy to pass federal legislation. She explained that the Board received several proposals from lobbyists and would schedule interviews with some. She reported that the first meeting in 2009 will be in May and the annual meeting would be in Oklahoma City. In addition, President Wagnon reported that the Executive Committee had agreed to allow ADP Taxware to increase its bond in lieu of the financial institution requirements in their CSP contract.

**Compliance Review and Interpretations Committee:**

Delegate John Doyle reported that the committee was reviewing each Member State’s compliance documents and would make a final report.

Delegate Doyle explained that the Governing Board had asked the committee to evaluate the New Jersey fur tax issues. He stated that it was the committee's determination (MC08028) that New Jersey's fur tax did not violate the SSUTA. President Wagnon stated that as there was no finding of non-compliance there will be no action taken on the report except to take public comment.

Mr. Steve Kranz said that his belief of the New Jersey fur tax discussion was that it was forwarded to CRIC for a recommendation and that there is a cause for final action because it was a recommendation and not a determination. He said on the substance of the recommendation the BAC does feel that New Jersey is out of compliance and they are strongly opposed to the CRIC decision.

Mr. Frank Julian said he agreed with Mr. Kranz. He said New Jersey told them a seller in New Jersey who sold fur from another state and had it shipped to New Jersey would not owe the use tax. He said that he sent a letter to New Jersey asking for that in writing so that we know that CRIC's decision is not based on that answer. He further supported Mr. Kranz in saying that they have a gross receipts fur tax and he has never heard of that other than in New Jersey.

Mr. Wayne Zakrzewski said this started when the mistake was made to allow Minnesota to become a member with a fur tax. He said everyone bent over backwards to allow a state to adopt a definition of fur clothing. He said the problem is that people are confused because they don't have to collect tax now but do not know if they will have to collect it later. Ms. Maureen Riehl supported Mr. Kranz and Mr. Julian's statements saying that she does not want to see the Governing Board be questioned because of actions like this.

Mr. Dale Vettel stated that perhaps the New Jersey fur tax violated the spirit of the SSUTA, but it was the committee's decision that they do not violate the letter of the SSUTA. Mr. Russ Brubaker said violating the spirit of the SSUTA troubled him and would be in favor of upholding the spirit of the SSUTA.

Mr. Craig Rook said that he agrees with Mr. Vettel in that they do violate the spirit of the SSUTA, but not the letter. He explained that in his opinion New Jersey followed the path set by Minnesota and the date for coming into compliance with the definition of fur had not expired. In response to a question from President Wagnon Mr. Rook said there was legislation pending to correct both the telecommunications and fur tax issues. Delegate Doyle reminded the Board that CRIC did not hesitate to find New Jersey out of compliance on the telecommunication issues for which the time had passed to be in compliance.

Mr. Kranz said that the BAC does not believe the New Jersey fur tax issue is the same issue as Minnesota's. He clarified that there is a different use tax and the Governing Board should find them out of compliance.

Mr. Kranz moved that New Jersey be found out of compliance because their fur tax has a use tax rate that is different than the state's use tax rate and is a violation of the one state

rate requirement of Section 308. Ms. Riehl stated that Mr. Kranz did a good job in differentiating between Minnesota's past issue and New Jersey current issue, but even if they were the same, the Governing Board needs to police its own issues.

Commissioner Bruce Johnson said that Utah has motor fuel taxes, hotel taxes, liquor taxes, and a number of other taxes outside the SSUTA and agrees that the New Jersey fur excise tax is unfortunately a violation of the spirit of the SSUTA. He said the Board needs to prohibit the things that are done to get around the SSUTA. He said that he recognizes the issue but will not speak in favor of the motion and that he thinks the replacement tax will be a good way to fix this.

In response to question from Senator Dwight Cook, Mr. Rook said the New Jersey law was changed based on the Board's decision on Minnesota's fur excise tax. Senator Cook stated that the Board developed a solution and needed to follow that solution. Mr. Julian said that New Jersey statute clearly imposes a use tax and is in violation of Section 308.

The motion made by Mr. Kranz failed on a roll call with Indiana, Kansas, North Dakota, South Dakota and West Virginia voting yes, Arkansas, Iowa, Kentucky, Michigan, Minnesota, Nebraska, North Carolina, Oklahoma, Washington and Wyoming voting no, and New Jersey and Vermont abstaining.

Commissioner Jerry Johnson moved that AM08014 under "referred proposals" be moved to "proposed amendments" for discussion and possible action. That motion was approved on a voice vote.

Mr. Kranz stated that the Business Advisory Council would initiate the Issue Resolution process relating to the New Jersey fur tax.

### **Proposed Amendments to SSUTA for Discussion and Possible Action:**

Ms. Sherry Harrell explained that AM08020A02 creates several new definitions for software maintenance contracts and how to characterize sales of such contracts. Mr. Dobson stated that additional toggles were added so the taxability matrix will allow states to clearly distinguish how they tax. Mr. Mark Nebergall thanked all for their hard work.

Mr. Vettel stated that Michigan did not support the proposal as it requires them to amend their statute which is becoming difficult to do. President Wagnon ruled that since this imposed a requirement on a state it would require a second vote at an upcoming meeting.

Mr. Dobson moved the approval of AM08020A02. That motion was approved on a roll call vote with sixteen states voting yes, Michigan voting no and two states absent.

Commissioner Jerry Johnson moved adoption of AM08012 relating to confidentiality and privacy for model 1 sellers. He said this proposal comes from discussion during the CSP contract renewal process when there was concern about whether or not a CSP could maintain certain information. The motion was approved on a roll call vote with

seventeen states voting yes and two absent. President Wagon ruled that this proposal does not impose a burden on any state and does not require a second vote.

Commissioner Jerry Johnson stated that the Board approved a replacement tax proposal in April and then in June assigned it to the State and Local Advisory Council. He said Okalahoma introduced AM08014 because he believes it is critical for the Board to adopt a proposal. He explained that this proposal requires rules which should be ready for adoption at the same time AM08014 comes up for a second vote. Commissioner Jerry Johnson moved to amend AM08014 to delete “for the purpose” and replace it with “which has the effect”. That motion was approved on a voice vote.

Mr. Vettel expressed his support for the proposal as it is critical to determine what replacement tax is. Mr. Brubaker said he strongly supports this as it will make it clear to businesses that the Board will resolve this issue. Mr. Dobson stated he agreed with the proposal, but there are many unanswered issues that must be resolved. Mr. Mike Bailey said having a rule before the vote in May would ease the minds of those who do not want to pass this amendment today.

Commissioner Jerry Johnson moved the adoption of AM08014 as amended. That motion was approved on a roll call vote with sixteen states voting yes, Iowa abstaining, and two states absent. Commissioner Jerry Johnson moved that the Governing Board suspend its rules for the sole purpose of assigning the State and Local Advisory Council the responsibility to draft rules to implement AM08014. That motion was approved unanimously on a roll call vote.

Ms. Harrell explained that AM08016 would amend that provision of the delivery charge definition so that the direct mail exclusion would also apply to direct mail that comes from a transaction a state considers the sale of a service. Ms. Harrell moved the adoption of AM08016. That motion was approved on a roll call vote with seventeen states voting yes and two absent. President Wagon ruled that AM08016 would require a second vote at an upcoming meeting.

Ms Harrell explained that AM08023 establishes a sourcing process for florist sales after the passage of federal legislation and AM08024A01 deleted the often extended date by which a state must use destination sourcing for florist sales and allow states to source as they so determined.

Mr. Brubaker stated that AM08023 was premature given that it related to federal legislation that had not been adopted. Commissioner Jerry Johnson stated that there was less support for AM08023 and moved to table AM008023. That motion was approved unanimously on a roll call vote with two states absent.

Ms. Harrell moved the adoption of AM08024A01. That motion was approved unanimously on a roll call vote with two states absent. President Wagon ruled that since this proposal does not impose a burden on any state it does not require a second vote.

Mr. Andy Sabol explained that AM08021 adds two limitations on how states administer a sales tax holiday. Mr. Sabol moved the adoption of AM08021. That motion was approved unanimously on a roll call vote with two states absent. President Wagnon ruled that since this proposal does not impose a burden on any state it does not require a second vote.

Commissioner Jerry Johnson explained that AM07036A07 made several changes to the requirements on states related to the central registration system. He explained that the registration system would be changed to allow Model 2, 3 and 4 sellers to register in all the states but indicate which states they made no sales. He said it would also be changed to include more information thereby allowing sellers one place where they could update all their registration information.

Commissioner Jerry Johnson said AM07036A07 also made several changes to the requirements on states related to uniform tax returns. He said there would be two parts to the return: Part 1 which would contain information relating to remittances and allocations and Part 2 which would contain information relating to exempt sales.

In response to a question from Mr. Vettel, Commissioner Jerry Johnson said there wasn't a specific deadline on the states for the uniform return and individual state needs could be accommodated. Ms. Susan Mesner said Vermont needed the information that would be provided in the informational report and wanted to make sure Part 2 would provide that data. Commissioner Jerry Johnson said he felt Part 2 would provide that information. Ms. Mesner said that they receive location information and would not be able to do that under this new section. Mr. Dobson asked if the timing in part 2 was the same for all types of sellers and that he shared Vermont's concern about the information.

Commissioner Jerry Johnson said the proposal does not tell a state that they can't use their own return, but that the states give every seller the option of a uniform return. Secretary Wagnon commented that this is the cornerstone of what Streamline is doing and we need to be ready for the storm. Ms. Jane Page showed concern about the extra work that comes along with the SER. Mr. Brubaker said that Washington has a big concern about expanding the SER because the ones they have aren't in good shape and it's taking an average of 4 hours to process. Ms. Harrell said Tennessee strongly believes in a uniform return, but is interested in the part 2 data elements. She said she can see a day when this would become the regular return in Tennessee.

Commissioner Jerry Johnson moved to change the date in Section 318(C) 3 d from 2012 to 2013. Mr. Kranz expressed concern about the states asking Congress to adopt federal legislation without having a working uniform return. Commissioner Jerry Johnson stated that the date he is proposing to amend is only for sellers not registered under the SSUTA. Mr. Charles Collins said it is a good amendment as it requires states to allow the use of a simplified electronic return to sellers that currently don't have that option. Commissioner Jerry Johnson said most states would be able to accept the return before 2013. Secretary Helton agreed with Mr. Kranz and said that he finds it hard to believe that it will take that long to make the change. The motion to amend the date was approved on a voice vote.

Mr. VanDevender moved to amend Section 318 F to delete “making an assessment” and inserting “establishing a liability amount for” and deleting “make an assessment” and insert “establish a liability amount for”. Commissioner Jerry Johnson explained that this provision is designed to stop states from sending sellers without nexus an assessment because they have failed to file a return. He said a state will be required to send a delinquent notice before an assessment notice. The motion was approved on a voice vote.

Mr. Wayne Zakrzewski commented that the uniform return must be done as quickly as possible because it is very important for business. He said this is something the Board can show to those in Congress. Mr. Kranz said that if we are going to Congress to ask for federal legislation the Board needs to show it is serious and the dates are too far in the future. He said the Board should be ready to revisit this date if Congress passes federal legislation. Mr. Jeff Hyde told the Board that he agrees that this is probably the most important thing that the Board has done to simplify things. He also explained that if we want to prove ourselves to Congress, we need to get this done as soon as possible.

Commissioner Jerry Johnson moved the adoption of AM07036A07 as amended. The motion was approved on roll call vote with fifteen states voting yes, New Jersey abstaining, Vermont voting no and Nevada and Rhode Island absent. President Wagnon ruled that since this proposal does impose a burden on any state it does require a second vote, and that vote will be in May 2009.

Mr. Gary Centlivre informed the Board that the Certification Committee was recommending that the federal employee identification number and the ability to have a second rate on food and drugs be added to the simplified electronic return. President Wagnon moved the addition of the two fields and the motion was approved on a voice vote.

President Wagnon explained that AM08003 would allow the Business Advisory Council and the State and Local Advisory Council to sponsor SSUTA amendments. She said this would eliminate the need for them to find a state sponsor. Mr. Vettel stated that because the Business Advisory Council’s meetings are closed to the public know one knows how much support their amendment might have. Commissioner Jerry Johnson said he thinks that if an idea is worth pursuing someone should be able to find at least one state to be a sponsor. Commissioner Bruce Johnson said that he supports the amendment because what the Business Advisory Council has asked him to sponsor have been worthy of debate. Mr. Rich Prem said the Business Advisory Council was in the process of putting into place a different process which would be more open. He said that this will strengthen this body as we go to Congress. President Wagnon moved the adoption of AM08003. That motion failed with thirteen states voting yes, Oklahoma voting no, Michigan, Minnesota, and Nebraska abstaining and Nevada and Rhode Island absent.

President Wagnon explained that the Board needs to adopt a rule for how to set the meeting agenda. She said that under RP08009 the president would set the agenda and



give proper notice. Senator Curtis Bramble said “acted upon” in section 4 was too vague to allow the president to not put an item on an agenda. Commissioner Bruce Johnson agreed with Senator Bramble and suggested changing the language to read “upon which final action was taken”. Mr. Vettel said the language after “Governing Board committee” in section 6 was redundant and should be deleted. President Wagnon moved to amend the proposal according to the suggestions made by Commissioner Bruce Johnson and Mr. Vettel. That motion was approved on a voice vote. President Wagnon moved the adoption of RP08009 as amended. That motion was approved on roll call vote with seventeen states voting yes and Nevada and Rhode Island absent.

Commissioner Jerry Johnson explained that RP08004A01 established a process for determining sanctions when a state is found out of compliance. He said section D contains the recommendations the Executive Committee could give to the Governing Board. Commissioner Jerry Johnson moved the adoption of RP08004A01. That motion was approved on a roll call vote with sixteen states voting yes and Minnesota, Nevada and Rhode Island absent.

Ms. Harrell explained that RP08008 required the Executive Director to annually publish a report of the SSUTA amendments that states must be in compliance with within the next year. Ms. Harrell moved the adoption of RP08008. That motion was approved on a roll call vote with sixteen states voting yes and Minnesota, Nevada and Rhode Island absent.

President Wagnon explained that because this is the annual meeting it was time to elect new officers and directors. She moved the election of the following slate of candidates for officers and directors:

Officers:

President – Del. John Doyle, W.VA  
President Elect – Jerry Johnson, OK  
Vice-President – Sen. Luke Kenley, IN  
Treasurer – Richard Dobson, KY

Directors for a 2 year term:

Sen. Dwight Cook, ND  
Sen. Pete Anderson, WY (second term)  
Andy Sabol (second term)

That motion was approved on a voice vote.

President Wagnon explained that each state would be given a slate of candidates for the Nominating Committee and could vote for eight of the candidates. She reported that the following were elected to the Nominating Committee:

Senator Orv Smidt  
Jane Page  
Tom Gillaspie  
Bill Riesenberger

Mary Cameron  
Representative Wayne Harper  
Mike Eschelbach  
Craig Rook

President Wagnon adjourned the meeting at 11:30 AM.