

**Minutes
Streamlined Sales Tax Governing Board
May 12, 2009**

**(For the purpose of continuity the following are not necessarily in the actual order
in which the discussion occurred.)**

Roll Call and Welcome:

President John Doyle called the meeting to order at 8:15am. All member states were present.

Senator Emmett Hanger welcomed the Governing Board to and thanked them for holding their meeting in Virginia. He said he supported Streamline and was working to pass legislation.

Commissioner Jerry Johnson moved to add AM09004, AM09004A01, AM09005A01, and AM09006A01 to the agenda. That motion was approved on a voice vote.

Approval of the Minutes:

Commissioner Jerry Johnson moved approval of the minutes from the February 26, 2009 Governing Board meeting (MM09001). That motion was approved on a voice vote.

Referral of Introduced Proposals to Committees/Councils for Study:

- **Good Faith definition – RP09001**

Ms. Jane Page explained that this proposal would implement the uniform good faith definition requirement in the proposed Federal legislation. She said the proposal was developed by the Streamline Audit Committee. She moved to refer RP09001 to the State and Local Advisory Council. In response to a question from Senator Tim Owens, Ms. Cathy Wicks explained that this proposed definition would apply only to an exemption certificate received by a retailer when the retailer did not get an exemption certificate at the time of sale. The motion was approved on a voice vote.

- **Tribal Government membership – AM09001**

Secretary Joan Wagon explained that this proposal would implement the tribal membership section of the proposed Federal legislation. She moved to refer this to the State and Local Advisory Council. That motion was approved on a voice vote.

- **Other Communications Taxes – AM09002 and AM09002A01**

Commissioner Jerry Johnson explained that this proposal would implement the local communication tax simplification requirement in the proposed Federal legislation.

Commissioner Jerry Johnson moved to refer this amendment to the Executive Committee. That motion was approved on a voice vote.

- **Vendor Compensation – AM09003**

Secretary Joan Wagnon explained that this proposal would implement the retailer compensation requirement in the proposed Federal legislation. She moved that this be referred to the Executive Committee. She explained that there were discussions still being held on the final compensation language and this proposal would be changed accordingly.

In response to a question from Mr. Fred Nicely, Secretary Wagnon said she was unsure if the credit card and debit card part of the Federal compensation language included systems such as PayPal. Mr. Rich Prem said the Governing Board needed more detail about how such transactions are being accomplished.

In response to a question from Ms. Susan Mesner, Secretary Wagnon said the most recent version of the compensation section in the proposed Federal legislation would require states to pay compensation to all vendors. She said the intent was that the compensation would be paid from the new money states collect from the collection authority granted in the Federal legislation.

Ms. Susan Mesner suggested that given the assumptions in the Fox, Bruce and Luna study it would prudent to include a provision that would allow the Governing Board to adjust the rate based on real data. Commissioner Jerry Johnson agreed with Ms. Mesner that it was important that states have the money to be able to pay vendor compensation.

Secretary Wagnon's motion was approved on a voice vote.

Final Action on Amendments from Previous Meeting:

- **Uniform Tax Returns – AM07036A07**

Commissioner Jerry Johnson explained that this is the second vote for this proposal after its first vote in December 2008. He said that since December a few changes were suggested for AM07036A07 and that instead of having a second vote on AM07036A07 this would be a first vote for the AM07036A08. Commissioner Jerry Johnson moved the adoption of AM07036A08.

In response to question from Ms. Cathy Wicks regarding the affective dates, Commissioner Jerry Johnson said that if this proposal were adopted there is nothing in it that would require a state to comply until 2 years from the date of adoption. The motion failed on a roll call vote with fourteen states voting yes, Michigan voting no, New Jersey abstaining, and Nevada, Rhode Island and Wyoming absent. Commissioner Jerry Johnson moved to reconsider the vote, which motion was approved on a voice vote. Commissioner Jerry Johnson moved to adopt AM07036A08. That motion was approved

on a roll call vote with fifteen states voting yes, Michigan voting no, New Jersey abstaining, and Nevada and Wyoming absent.

- **Replacement Taxes – AM08014A01 and RP09006A01**

Commissioner Jerry Johnson explained that AM08014A01 would prohibit states from creating new taxes to avoid a requirement of the SSUTA. He said this proposal was ready because of the rule that explained how to determine what taxes would be prohibited replacement taxes. He moved to amend AM08014A01 by inserting “prohibited” before “replacement tax.” That motion was approved on a voice vote. Commissioner Jerry Johnson moved the adoption of AM08014A01 as amended. That motion was approved unanimously on a roll call vote. Commissioner Jerry Johnson asked unanimous consent to waive the second vote requirement, which request was approved without exception.

Mr. Michael Eschelbach explained that RP09006A01 was the rule intended to guide the Governing Board as it determined whether or not a tax was a prohibited replacement tax. Mr. Eschelbach moved the adoption of RP09006A01. That motion was approved unanimously on a roll call vote.

Reports of committees:

- **Finance Committee**
 - 2nd and 3rd Quarter Financial Reports

Mr. Richard Dobson gave the treasurer’s report. He explained that Governing Board income and expenditures were going according to the adopted budget. He moved to accept the Finance Reports. That motion was approved on a voice vote.

- **Executive Committee**
 - Legislative meeting expenses

President Doyle explained that he wanted a way to increase legislative participation in Streamline meetings. He said the proposal would pay the travel and meeting expenses for legislators to attend meetings. Commissioner Jerry Johnson suggested that instead the Governing Board should create a hardship fund for those states that don’t usually send a delegate or legislator.

In response to a question from Mr. Steve Kranz, Mr. Scott Peterson said the meeting fees are set to cover the meeting expenses and the only money available for this idea is from state membership dues.

Representative Deb Peters and Commissioner Roger Ervin said their states would not like paying for their legislators to attend meetings when other state’s legislators had their expenses paid.

Senator Tim Owens stated that the Governing Board should pay for only one legislator per state. Representative Paul Dennert agreed and said that it would make it equal for all states. He said whether a state sends one person or three, they would only person's expenses would be paid.

Representative Peters moved to amend RP09005 so that Governing Board pays the expenses for one legislator to attend the annual meeting. She said that it's difficult for states to send legislators in this economy and the annual meeting is the most important. She clarified that this would only be for legislators of member states. The motion to amend passed on a voice vote. Ms. Kristi Magill asked why the annual meeting and not the meeting in Washington, DC. In response, President Doyle said the only reason to meeting in DC was to lobby. Representative Peters moved to adopt RP09005 as amended. The motion passed on a roll call vote with sixteen states voting yes, and Kansas, Michigan, Minnesota, Nebraska, New Jersey, and Ohio voting no.

- **Compliance Review and Interpretations Committee**
 - Wisconsin's Petition for membership

Mr. Andy Sabol explained that the Business Advisory Council and the Compliance Review and Interpretations Committee both submitted a list of issues to Wisconsin after review of their documents. He said the Compliance Review and Interpretations Committee recommended that Wisconsin be admitted as an associate member on July 1, 2009 and a full member on October 1, 2009.

Mr. Fred Nicely said the Business Advisory Council found no issues of high importance but wanted assurance from Wisconsin that they would follow through with the regulations and address the leasing issues.

Ms. Diane Hardt reported that those issues are being worked on as well as some technical changes. Commissioner Roger Ervin thanked the Governing Board for all of their support and work on the review. He also thanked his staff for all the work they did to get everything changed.

Mr. Andy Sabol's motion was approved unanimously on a roll call vote.

- Software license interpretation opinion –IO09001

Mr. Sabol explained the Mr. Mark Nebergall's request for interpretation relating to software licenses. He said the Compliance Review and Interpretation Committee disagreed with Mr. Nebergall and was recommending that the additional license to use the software be treated the same as the original purchase of the software license. Mr. Andy Sabol moved acceptance of Interpretative Opinion IO09001.

Mr. Mark Nebergall urged the Governing Board to vote no on the motion. He said the facts in this request were two separate transactions. Mr. Kranz also urged the board to vote against this.

Representative Deb Peters stated that regardless whether it's a copy of a copy or another copy of the same, it should have the same tax treatment as the original purchase.

Mr. Sabol's motion was approved on a roll call vote with sixteen states voting yes, Kansas voting no, and Nevada and Rhode Island absent.

- Report on State Compliance

Mr. Andy Sabol explained the process the Compliance Review and Interpretations Committee used to review the compliance of all of the states with the SSUTA. He thanked Ms. Pam Cook, Mr. Peterson, and the Committee for all the work they did on the compliance review.

In response to a request from Secretary Wagnon about annual recertification, Mr. Peterson explained that if the Compliance Review and Interpretation Committee found a state out of compliance that decision was automatically on the Governing Board's agenda.

Mr. Kranz said that in addition to the states listed in the Committee's report, the Business Advisory Council would like to discuss a couple of other states they believe are out of compliance. Mr. Kranz explained that they should be allowed to bring their concerns before the Board because the standards used by the Compliance Review and Interpretation Committee changed in the middle of their review process. President Doyle explained that the rules limit the debate to what is proposed by the Compliance Review and Interpretation Committee. He said if the Business Advisory Council believed there are issues with other states they should submit a compliance petition pursuant to Rule 904.

In response to a question from Secretary Virgil Helton, Mr. Peterson said the Issue Resolutions Committee would be the venue after the Governing Board's response to the Rule 904 compliance petition.

Indiana

Senator Dwight Cook moved to find Indiana out of compliance. Mr. Kranz reported that the Business Advisory Council supports the motion. Secretary Wagnon spoke in favor of this motion. In response to a question from Mr. Joe VanDevender, Mr. Peterson said that compliance actions taken by Indiana after the Governing Board's decision would stop the process.

The motion to find Indiana out of compliance failed on a roll call vote with thirteen states voting yes and Iowa, Kentucky, Michigan, Minnesota, and Nevada voting no.

Secretary Virgil Helton moved to reconsider the vote that found Indiana in compliance, which motion was approved on a voice vote. The motion to find Indiana out of

compliance failed on a roll call vote with thirteen states voting yes and Iowa, Kentucky, Michigan, and Nevada voting no.

Iowa

Senator Cook moved to find Iowa out of compliance. Commissioner Jerry Johnson said that if a state has resolved their issues between the time they were found out of compliance and now, that he would not vote them out of compliance, but if they haven't, then they must be found out of compliance. He said it is not a matter of if they will get it fixed soon; as of now, they are out of compliance and he supports the motion.

President Doyle expressed support for Commissioner Jerry Johnson's comments. Mr. Kranz said the Business Advisory Council supported the motion.

The motion to find Iowa out of compliance was approved on a roll call vote with seventeen states voting yes and Michigan voting no.

Kentucky

Mr. Richard Dobson reported that the legislation has passed with a July 1, 2009 effective date. Representative Peters questioned whether a motion was necessary given they have adopted the necessary laws. Mr. Russ Brubaker moved to find Kentucky in compliance. The motion was approved on a roll call vote with eighteen states voting yes.

Michigan

Senator Cook moved to find Michigan in compliance. Mr. Charles Collins said Michigan had filing and payment issues and did not support the motion. The motion was approved on a roll call vote with eighteen states voting yes.

Senator Cook moved that all the other states be found in compliance. President Doyle ruled the motion out of order after Mr. Peterson explained that once a state is admitted they remain in compliance until they are found out of compliance.

Vermont

Ms. Susan Mesner moved to find Vermont in compliance. Mr. Fred Nicely stated that Vermont is out of compliance relating to prepaid calling services. He said he hopes Vermont is resolving these issues but are currently out of compliance. Senator Curtis Bramble said that states need to get things done and as an associate state Utah can't ask to become a full member until they have all of their issues fixed. He said it's not about intent, but resolution. The motion to find Vermont in compliance was approved on a roll call with sixteen states voting yes and South Dakota and Washington voting no.

Rhode Island

Mr. Peter McVay moved to find Rhode Island in compliance. Mr. Nicely said that Rhode Island's provisions for ancillary services are not listed in their laws and regulations. Mr. McVay said they are administering it consistently with the SSUTA and will soon pass legislation. Mr. Nicely said it's not about intent. Ms. Deborah Bierbaum said it is business that is caught in the middle. She is concerned that someone will say ATT is doing something wrong and the state has nothing in their laws and regulations to back up their interpretation. The motion to find Rhode Island in compliance was approved on a roll call vote with sixteen states voting yes and South Dakota and Washington voting no.

Nevada

Mr. Dino DiCianno moved to find Nevada in compliance. Mr. Nicely said that there are a lot of concerns regarding Nevada's compliance. In response to a question from Secretary Wagnon, Mr. Sabol said the Compliance Review and Interpretation Committee found Nevada in compliance because they could find no change in their rules or their statutes since they were admitted. Ms. Valerie Pfeiffer explained that Nevada has conflicting lease definitions and the Equipment Leasing Association would file a formal petition that Nevada is administering provisions that are not compliant with the SSUTA. Mr. Dino DiCianno said there is no question that Nevada is unique. He said that changes would have to wait until their Legislature was no longer in session. The motion to find Nevada in compliance failed on a roll call vote with fourteen states voting yes, Arkansas, Kansas, South Dakota, and Washington voting no. In response to a question from President Doyle, Mr. Peterson stated that the motion to find Nevada in compliance was an inappropriate motion given that the Compliance Review and Interpretations Committee had not found Nevada out of compliance. He said that every state was in compliance until found out of compliance.

- **State and Local Advisory Council**

Ms. Sherry Harrell reported that State and Local Advisory Council had held 6 meetings by teleconference. She said they worked on delivery charges, direct mail, and direct mail sourcing. Ms. Harrell reported that the new taxability matrix will soon be ready for states to fill out.

Proposed Amendments to SSUTA for Discussion and Possible Action:

- Delivery charge – AM09004 and AM09004A01

Commissioner Jerry Johnson explained that this proposal should resolve the issues relating to delivery charges. He said consensus was achieved with the addition of a postage toggle. Commissioner Jerry Johnson moved the adoption of AM09004A01. The motion was approved on a roll call vote with sixteen states voting yes and Nevada, Rhode Island, and Wyoming absent.

Commissioner Jerry Johnson moved the adoption of RP09002A01 which is a companion rule to the delivery charge amendment AM09004A01. The motion was approved on a

roll call vote with nineteen states voting yes and Nevada, Rhode Island, and Wyoming absent.

- Kansas local government amendment -- AM08022

Secretary Wagon moved the adoption of AM08022. She said this amendment was permissible and would allow states to have local government officials on the state's delegation. The motion was approved on a roll call vote with fifteen states voting yes, Iowa voting no, and Nevada, Rhode Island, and Wyoming absent.

- Direct Mail Sourcing – AM09005 and AM09005A01

Ms. Sherry Harrell moved the adoption of AM09005A01. She said this amendment defines and sources advertising and promotional direct mail and other direct mail. She said there are provisions to deal with special situations such as bundled transactions and with the election for origin-based direct mail.

Ms. Magill said a lot of effort had gone into this issue and there are a few remaining issues. Mr. Wayne Zakrzewski said that he is in favor of the amendment, although he did not see a need for the provision that would allow a state to disallow a credit for taxes paid to the state of printing and would like to see it stricken from the amendment.

Ms. Susan Haffield said this could lead to double taxation and no one will use the printers if they are taxed twice. Mr. Mark Nebergall urged the members of the Governing Board to vote in favor of the motion.

The motion was approved on a roll call vote with sixteen states voting yes, Arkansas voting no, and Nevada and Wyoming absent.

Proposed Rules for Discussion and Possible Action:

- Part 2 data elements – MC09001

Commissioner Jerry Johnson moved to adopt MC09001 that will add 6 fields to part 2 of the Simplified Electronic Return. Mr. Fred Nicely said these are items some states do not currently require and is information some businesses would have difficulty providing. He suggested that there be only one instead of six. Commissioner Jerry Johnson said these are necessary for auditing purposes.

The motion was approved on a roll call vote with twenty states voting yes and Minnesota and Nevada absent.

- Certifying vendor databases – RP09003

Mr. Gary Centlivre explained that this rule will provide states with a uniform process to certify the accuracy of vendor supplied jurisdiction databases. Secretary Wagon moved the adoption of Rule RP09003. Mr. Bob Meador urged the board to pass this rule.

The motion was approved on a roll call vote with twenty states voting yes, Minnesota voting no, and Nevada absent.

- Report format – RP09004 and RP09004A01

Secretary Wagon moved the adoption of RP09004A01. She said this would create uniform file formats for reports certified service providers provide to states. Mr. Joe VanDevender strongly supported this motion.

The motion was approved on a roll call vote with twenty-one states voting yes and Nevada absent.

- Effective date for when officers take office – BL09001

President Doyle explained that this would change from October 1 to January 1 as the date for the start of the term for elected positions. Secretary Wagon said October 1 just happened to be the day when the Governing Board was organized and did not match up with any other date. Secretary Wagon moved the adoption of BL09001. That motion was approved unanimously on a voice vote.

- Delivery charges -- RP09008

Ms. Sherry Harrell moved to suspend the rules to add RP09008. She explained that it is the companion rule that goes with the direct mail amendment AM09005A01. That motion was approved unanimously on a voice vote.

Mr. Kranz said that the Business Advisory Council supports adoption of the rule. Ms. Harrell commented that if this rule is adopted it will not go into affect until the second vote on rule 313.

Commissioner Jerry Johnson spoke in favor of adopting this as it was developed along with the amendment and they should be adopted as a package.

Ms. Harrell moved to adopt RP09008. The motion was approved on a roll call vote with twenty states voting yes, Arkansas voting no, and Nevada.

Mr. VanDevender moved to adjourn the meeting at 4:50 pm. The motion was approved on a voice vote.