

Minutes
Streamlined Sales Tax Governing Board
September 29-30, 2009

Welcome and Roll Call of Member States:

President John Doyle called the meeting to order at 1:18 PM. All member states were present and voting.

Mr. Stephen Kranz moved that Tennessee should not be counted as a member state as their membership expired on July 1, 2009. President Doyle ruled the motion out of order stating that a state is a member until voted out.

Commissioner Jerry Johnson welcomed the Governing Board to Oklahoma City.

Approval of minutes from May 12, 2009:

Representative Ross Hunter moved the approval of the minutes from the May 12, 2009 meeting of the Governing Board (MM09002). That motion was approved on a voice vote.

Referral of Introduced Proposals to Committees/Councils for Study:

President Doyle referred the following to the Executive Committee:

- Vote requirements – AM09010
- Associate States Qualification – AM09013
- Change in Vote Requirements – BL09002
- Committee Processes and Administration – BL09003
- Annual Recertification – BL09004
- Types of State Membership – BL09005
- Vendor Compensation – RP09010
- Annual Recertification – RP09011
- Noncompliance Sanctions – RP09012
- Annual Recertification – RP09013

President Doyle referred the following to the State and Local Advisory Council:

- Sales Tax Holidays – AM09006
- Software Maintenance Contract Definition – AM09011
- State and Local Sales Tax Rates – AM09012
- Additional remittances and refunds – AM09014

- Deadline for Filing Amendments – AM09015
- Filing Returns and Making Remittances – AM09016
- Exemption Certificates and Good Faith – AM09017
- Refund Time Period – AM09018
- Purchasers and State Level Administration – AM09019
- Offsetting owed tax against a refund – AM09020

President Doyle referred the following to today's agenda:

- Disaster Preparedness Holiday Definitions – AM09007
- Noncompliance Sanctions – AM09009
- Types of State Membership – AM09021
- Origin sourcing – AM09022

Mr. Kranz moved that AM09012 relating to State and Local Sales Tax Rates not be referred to committee and be placed on the agenda. Representative Hunter moved to table the motion, which passed on a voice vote.

Final Action on Amendments from Previous Meeting:

- **Uniform Tax Returns -- AM07036A08**

Commissioner Jerry Johnson moved the second vote and final adoption of AM07036A08. He said the amendment was first approved in December 2008 but was then amended in May 2009. He said that this is an important amendment that had Business Advisory Council (BAC) support. The motion was approved on a roll call vote with Michigan, Minnesota and New Jersey voting no and Rhode Island absent.

- **Direct Mail Sourcing -- AM09005A01**

Ms. Sherry Harrell moved the second vote and final adoption of AM09005A01. She said this amendment received its first vote in the May 2009. Ms. Harrell said there was a corresponding rule (RP09009) that had the support of the State and Local Advisory Council (SLAC). The motion was approved on a roll call vote with Rhode Island absent.

Discussion on items referred to committees:

- **Noncompliance Sanctions -- AM09009**

Mr. Fred Nicely said that AM09009 amends those sections of the Streamline Agreement relating to sanction. He said the Governing Board has required a ¾ vote to find a state out of compliance when there is no such requirement in the Streamline Agreement. He said this amendment will create the requirement for a ¾ vote with sanctions then being imposed with a majority vote. Mr.

Steve Kranz said the BAC supports this amendment. Commissioner Jerry Johnson said that this is a critical issue to be addressed but he has some concern with the automatic expulsion of a state. He stated that what is most important is the ultimate sanction and there is no need for intermediate sanctions. He cited Iowa as an example in that they were found out of compliance on 4 issues and resolved 3 of them through rule making.

Mr. Dobson stated that there is a process for determining compliance and non-compliance that includes that a state is in compliance until found out of compliance. Mr. Rich Prem thinks that Section 2 should be put aside and we should try to move forward. Mr. Dale Vettel commented that this amendment needs more time.

Secretary Joan Wagon stated that if this amendment were on the agenda she would make a motion to remove Section 2 from this amendment. Senator Curt Bramble stated that he does not support this amendment as written and agrees with the referral to the Executive Committee.

Vote Requirements -- AM09010

President Doyle explained that this proposal would change the vote requirement so that $\frac{3}{4}$ of those present could pass an amendment as long as that amount was at least 60% of the states eligible to vote. Senator Cook asked if it should be $\frac{3}{4}$ of the members voting on that particular issue rather than those eligible. Mr. Joseph VanDevender said that less than half the members could pass an amendment and that was too few. Ms. Mary Cameron and Commissioner Bruce Johnson agreed that more votes should be required. Mr. Prem said that BAC does not support the proposal because the change because it could have the effect of reducing meeting attendance after so much had been done to increase attendance. Mr. Russ Brubaker said that the $\frac{3}{4}$ vote requirement caused Washington to work hard to get their membership approved. Secretary Virgil Helton supported referral to the Executive Committee.

Mr. Peterson said that the corresponding bylaw amendment (BL09002) would also be referred to the Executive Committee.

Associate States Qualification -- AM09013

Mr. Steve Kranz explained that this proposal would limit associate membership to states with origin sourcing. He said the BAC submitted a letter to the President arguing that Tennessee was out of compliance and had forfeited its membership pursuant to Section 705. Representative Tom Letson said that this was supposed to be an inclusive group with as many people at the table as possible. He said that this amendment seems to defeat that purpose. Commissioner Jerry Johnson said there is a process the BAC could have used to resolve this rather than sending a letter to the President. Mr. Peterson explained that the SSUTA has conflicting sections. He said that Section 705 says that an associate state forfeits its membership if it doesn't come into compliance by July 1, 2009, but Section 808 establishes a process for an orderly exit so there is no hardship imposed on sellers. Mr. Nicely said that Tennessee is different than the other states

because they have delayed the effective dates. He said they were originally supposed to come into substantial compliance by 7/1/07, then that date was delayed to 7/1/09 and now it is delayed until 7/1/11. He said that they should be forced to forfeit their membership.

Types of State Membership -- AM09021

Secretary Wagnon explained that AM09021 defines a full member state, create a contingent member state, and restructures the associate membership. Mr. Peterson said a contingent member would have almost all the rights of a full member. Mr. Peterson said the associate state language was the language used by the Governing Board in 2005 when the associate states were first admitted. Secretary Wagnon explained that this proposal will allow the board to grow. Mr. Kranz said he is concerned about the message being sent by this proposal. He said the BAC has worked for 10 years to simplify sales tax. He said they have been there helping get legislation through and they were hoping to achieve the goals of the agreement.

Mr. Kranz objected to the section that grants a permanent grandfather clause for associate states until the Governing Board finds them out of compliance. Ms. Susan Mesner said that associate state status was meant to be a bridge to full membership. She said it was to be a temporary stage and this section would allow a state to be an associate member forever. Secretary Wagnon stated that it does not have a timeline, but the key is how substantial compliance is achieved. She said if states sit around without making any progress they can be found out of substantial compliance.

Ms. Mesner asked if substantial compliance would be different for a full member than it would be for an associate member. Mr. Peterson said that compliance would be the same for those requirements imposed on an associate state.

Commissioner Bruce Johnson explained that being an associate member is not a great honor given that sellers are not required to collect their sales tax, they cannot vote on certain issues, and they cannot serve on CRIC. He said he doesn't understand the objection to a state wanting to be an associate member.

In response to a question, Secretary Wagnon explained that the proposed Federal legislation does not grant collection authority to any state other than a full member. Mr. Nicely stated that it was important to have a deadline by which time a state must become a full member. Mr. Peterson stated that the origin sourcing change the business community doesn't like happened because the deadline created pressure on the Governing Board to either change the requirements or lose states.

In response to a question from Senator Cook, Mr. Peterson explained that there are rumors that Tennessee has stopped doing the things that they were originally doing that brought them into substantial compliance as an associate member. He said he doesn't believe those rumors are true, but if true, then the Governing Board should find them out of compliance.

Mr. Kranz said that allowing an associate member, such as Tennessee, to stay on the Governing Board creates issues for retailers in Tennessee. Delegate Doyle said that if Tennessee were not a member those retailers would have all the same issues.

Mr. Dobson suggested there seemed to be a need for a rule for the Governing Board to measure the progress of associate members. President Doyle deferred further action on the proposal.

Origin Sourcing -- AM09022

Commissioner Bruce Johnson explained that this proposal would let the uniform origin sourcing go into effect on January 1, 2010 even though five states have not adopted it. He said it would allow a state that has adopted uniform origin sourcing to be an associate state until either five states adopt that sourcing or the state adopts destination sourcing. Commissioner Bruce Johnson moved the adoption of AM09022.

Senator Cook asked how the dates and the amendment to Section 705 would be impacted by AM09021 since it does away with Section 705 and this one amends Section 705. Commissioner Bruce Johnson explained that we can't assume that action will be taken on AM09021, but if AM09021 is approved it will strike Section 705, and the rest of AM09022 will still be true.

In response to a question from Mr. Kranz about whether or not the 5 states had to be current associate states or if a current full member could switch to origin sourcing, Commissioner Bruce Johnson explained that states that were full members would not be subject to this.

Mr. Mark Haskins said that Virginia considered SST, but the Legislature was not going to change their laws simply to meet a deadline. He said for Virginia to move forward origin sourcing would have to be an option.

Representative Wayne Harper stated that there are real issues on the agenda and said it would not be a good idea to not have origin sourcing as an option. Mr. Bill Riesenberger reminded the members that associate members have to pay full dues and they don't have a vote. Mr. Nicely reminded the Governing Board that this proposal applied to only 2 states and not to Tennessee.

Secretary Wagon stated that she visited Missouri regarding Streamline and they will not consider coming in without the option of origin sourcing. Ms. Harrell clarified that they haven't adopted the origin sourcing however they will be using it as part of the progress to become a full member state.

The motion to adopt AM09022 was approved on a roll call vote with eighteen states voting yes and Rhode Island absent.

Types of state membership -- AM09021

Secretary Wagon requested that AM09021 be taken up for action. President Doyle approved the request.

Secretary Wagnon said that she would draft a rule to go along with AM09021 that would guide the Governing Board when deciding to admit a state as an associate state. Senator Cook asked that a second vote be taken on AM09021 in order to make sure the coordinating rules are done. Secretary Wagnon agreed to this.

Secretary Wagnon moved to adopt AM09021. Mr. Frank Julian said he strongly opposed adoption of this amendment because the provisions are too broad. Representative Peters clarified that this amendment will require a second vote at the request of the sponsor. The motion to adopt AM09021 was approved on a roll call vote with seventeen states voting yes and Rhode Island and Vermont absent.

Disaster Preparedness Holiday Definitions -- AM09007

Ms. Harrell explained that AM09007 provides sales tax holidays definitions for items related to natural disasters. She said there are 4 definitions and the states can adopt 1 or all of them. Mr. Kranz reported that the BAC is neutral on this proposal. Ms. Harrell moved the adoption of AM09007. That motion was approved on a roll call vote with 18 states voting yes and Rhode Island absent. Mr. Peterson explained that this amendment does not require a second vote.

Executive Committee Report

Vendor Compensation -- AM09003

Secretary Wagnon explained that AM09003 is the vehicle being used to discuss vendor compensation. She said the Executive Committee was developing the standards that would be used by each state to set their compensation rates. She said the proposal was being designed to meet the requirements of the proposed Federal legislation, including the payment of the credit card fees on the tax paid on a purchase. She explained that President Doyle would soon announce the names of those on a task force of state and business to work more on this issue.

Senator Cook asked how the Governing Board planned to come up with a unified message for Congress. He said that he doesn't think there is a unified message. President Doyle explained that the Board might not all agree on every detail and might not have a unified message. In response to a question from Senator Cook about when the Governing Board would have a discussion, President Doyle said they can be taken up at any time. Secretary Helton said that he agreed with Senator Cook on the federal bill. He explained that we were very close to Federal introduction but it was postponed because we wanted a place holder for vendor compensation. He said the states would be better off with a solid position before we try to get it introduced again.

Ms. Cameron said she felt as though she was kept in the dark regarding compensation. President Doyle said it wasn't anyone's intention to keep states in the dark, but that discussion of the Federal legislation is complicated. Commissioner Jerry Johnson said the states need to be

somewhat on the same page regarding vendor compensation and that both the BAC and the states are fully engaged. He said that his role in the discussions was to find out what it would cost to be able to determine if it's something Oklahoma can support. Secretary Wagnon said she had tried to include different people, but she hasn't had a large group discussion. Ms. Sherry Harrell said that Tennessee would like to be included in discussions regarding a trigger. Representative Wayne Harper said he cannot sell compensation that takes one third of the new money and would like something else to take to Utah. Ms. Mesner said that the compensation discussions were based on the Fox estimate of future revenues and she is concerned the numbers were too high because of the recession.

Other Communication Taxes -- AM09002A01

Commissioner Jerry Johnson explained that AM09002A01 was drafted for two purposes. The first is to assist states administer the local communication taxes provision in the proposed federal legislation. The second is to assist any state that wanted to voluntarily make their local communication taxes simpler. In response to a question from President Doyle about the timing of the adoption of this proposal, Commissioner Jerry Johnson said he thinks this proposal should be completed before the Federal legislation is adopted, but the Federal legislation could be introduced before this proposal is adopted.

Finance Committee Report

FY2009 Annual Financial Report -- FR09003

Mr. Richard Dobson reported that the Governing Board ended FY09 with a balance of \$832,238.00. He said that revenues were below budget and declined 26% from the previous fiscal year but the Governing Board was in strong financial standing.

Mr. Dobson moved to accept the report. That motion was approved on a voice vote.

Mr. Dobson explained the Finance Committee's recommended budget amendments. He explained that the changes were being made to reflect how money was spent in the previous year and included moving money from salaries to contractual services. Mr. Dobson moved adoption of the budget amendments. That motion was approved on a voice vote.

Mr. Dobson explained that the FY2011 proposed budget (FC09017) would be very similar to the FY2010 budget and would have an ending balance of \$447,367. He said that is much less than how FY2009 ended and the Finance Committee was recommending the Governing Board spend some of the surplus. In response to a question from Senator Gary Stanislawski about spending the surplus instead of reducing dues, Mr. Dobson said the reserve was too large. Mr. Peterson explained that the Governing Board decided to keep a reserve equal to 50% of the budget. He said the dues are lower than in the beginning. Mr. Rich Prem said the Board should not spend its reserve as he believed the Board needs to buy technology to help small retailers. In response to a

question from Senator Stanislawski regarding the “other” category under contractual services, Mr. Dobson explained that the money is used to pay the Federal lobbyists and Ms. Pam Cook. Mr. Dobson moved the adoption of the FY2011 budget. That motion was approved on a voice vote.

Mr. Peterson explained that he would calculate the dues based on the adopted budget. He said they will be a little different than they were last year because Wisconsin became a member.

Compliance Review and Interpretations Committee (CRIC)

Mr. Myles Vosberg reported that CRIC had done the initial 2009 recertification review and the committee was in a 30 day public comment period.

Soft Drink & Candy Definitions -- IO09002, IO09003 and IO09004

Mr. Vosberg explained that CRIC had three interpretation requests related to the definitions of candy and soft drinks. He said that IO09002 asked whether or not Margarita Mix was a soft drink and that CRIC is recommending that it be interpreted to be a soft drink. Mr. Vosberg said that IO09003 asked whether Lipton PureLeaf Iced Tea was or was not a soft drink and that CRIC is recommending that it not be considered a soft drink. Mr. Vosberg said that IO09004 asked whether or not baking bits were candy and that CRIC is recommending that it be considered a candy.

Mr. Vosberg moved adoption of all three interpretation requests. That motion was approved on a roll call vote with nineteen states voting yes.

Sales Price Definition – IO09005

Mr. Vosberg said that IO09005 asked whether or not points earned by an employee and redeemed on the purchase of tangible personal property were a discount and excluded from the sales prices. He said that CRIC is recommending that these points be considered a discount and excluded from sales price.

Ms. Loren Chumley said that her client created this points program as a way of increasing sales and that if an employee reaches certain sales goals they receive a certain amount of points. She said the employee can then use the points to reduce the purchase price for tools used by the employee in their work or they could use the points towards travel hosted by the client.

Mr. Russ Brubaker said that the points should be considered consideration and included in the sales price. Mr. Vosberg said that if an employee received cash and then made a purchase then he could see that it would be consideration. Representative Deb Peters explained that from an accounting point of view this was an employee incentive that might have income tax ramifications, but that points are a discount. Ms. Ellen Thompson said that the points are

consideration because the points can be used for things that aren't sold by the company, such as travel. Ms. Mary Cameron agreed.

Senator Stanislawski asked about an employee who decides to redeem their points for a cruise and Ms. Chumley explained that the employer would arrange the cruise and the points would reduce the cost the employee pays for the cruise.

Mr. Vosberg said that one of the issues CRIC discussed was that the points might have some cash value, but Ms. Chumley had told CRIC that the points reduced the purchase price of tools much more than the cash value of the points. He said CRIC discussed whether the points were a discount or whether the cash value of the points was consideration when the cash value was less than the points reduced the price. Mr. Wayne Zakrzewski said the sales price definition clearly says that something provided by the seller that reduced the price was a discount regardless of the form of the discount. He said some were confusing income tax accounting and sales tax accounting and if the points had any cash value that would be accounted for in the state's income tax. In response to question from Ms. Cameron on the use tax implications of the transaction, Ms. Chumley said there may be a use tax owed but it might vary state-to-state.

Mr. Vosberg moved adoption of this interpretation. That motion failed on a roll call vote with Indiana, Iowa, Kentucky, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, and West Virginia voting yes; Arkansas, Kansas, Michigan, Minnesota, Nebraska, Washington, and Wyoming voting no; and Vermont abstaining.

Ms. Chumley told the Governing Board that a uniform definition means nothing without a uniform interpretation, and this was setting a very dangerous precedent. She said her client does not know how to treat these transactions even with a uniform definition.

Commissioner Jerry Johnson said that if we don't answer this question then we are going to have problems in the future. Mr. Dale Vettel agreed but that it is a difficult question. Mr. Russ Brubaker said there needs to be an answer and it should go to SLAC. President Doyle assigned this issue to SLAC.

Senator Dwight Cook said that CRIC interpretations have always been approved and he was surprised at the outcome. Secretary Joan Wagon agreed and moved to reconsider the vote. Ms. Maureen Riehl said she supports the motion because it is important that a conclusion be reached today. The motion to reconsider the motion was approved on a voice vote. President Doyle announced that the motion to accept the interpretation is back on the floor.

Ms. Riehl said the definition contains the answer to the question and that if the seller reduces the price of a product it is a discount regardless of the form of the discount. Mr. Richard Dobson said that this is has been a healthy debate, but CRIC approval is not the last step and an interpretation must be approved by the Governing Board.

Mr. Zakrzewski said that there should be a conclusion whether it's an interpretation or an amendment to the agreement. Mr. Charles Collins pointed out that the consequence of the decision, from the point of view of the CSP's is to default to taxable if they don't know what to do with it. Representative Hunter said that an interpretation might cause a state to enact legislation. The motion to approve the interpretation failed on a roll call vote with Indiana, Iowa, Kansas, Kentucky, Nevada, New Jersey, North Carolina, Oklahoma, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming voting yes; Arkansas, Michigan, Minnesota, Nebraska, and Washington voting no; and North Dakota abstaining.

President Doyle assigned the issue to SLAC and Commissioner Jerry Johnson asked if SLAC could work on this and have something ready by December. Ms. Harrell said she thought so but it could be a problem.

Direct Mail Sourcing -- RP09009

Ms. Harrell explained that this rule goes with the previously approved direct mail amendment. She said it explains how the amendment works with examples. Ms. Harrell moved to adopt the rule. That motion was approved unanimously on a roll call vote.

Annual Recertification - BL09004, RP09011, and RP09013

Mr. Vosberg explained that the CRIC and the BAC had been working to agree on a rule that adds more structure to the annual recertification process. He said one of the important goals was to complete the process before January 1 so that any state found out-of-compliance is able to address their issue while their Legislature is in session. He said that none of the rules would impact the process this year. Mr. Nicely agreed with those goals. He said that in addition to the timing of the process, the BAC wants a consistent standard used by CRIC throughout the review process. He said the BAC would also like to see the Governing Board review the states on every section of the agreement. Representative Peters said the issue needs to be dealt with quickly regardless of how it goes.

Mr. Nicely moved that the BAC version be assigned to the Executive Committee. Mr. Vosberg moved that the CRIC version be assigned to the Executive Committee. Those motions were approved on a voice vote.

Announcements

Mr. Neal Osten said that he was glad to see so many legislators given the importance of the cause. He said that there is an NCSL task force that deals with Streamlined Sales Tax and asked any legislator that wants to be involved to contact him.

Nominating Committee

Representative Hunter moved to elect the following slate of candidates for officers and directors:

- Jerry Johnson, President
- Luke Kenley, First vice president
- Russ Brubaker, Second vice president
- Richard Dobson, Secretary-treasurer
- Tom Hansen, Director
- Dale Vettel, Director
- Joan Wagnon, Director

That motion was approved on a voice vote.

Ms. Jane Page moved to elect the following slate of candidates for the Nominating Committee:

- Joe VanDevender
- Mary Cameron
- Paul Dennert
- Michael Eschelbach
- Craig Rook
- Tom Gillaspie
- Bill Reisenberger
- Richard Cram
- Peter McVay

Mr. VanDevender withdrew his name from the slate of candidates. The motion to elect the others was approved on a voice vote.

Audit Committee

Mr. Bruce Christensen reported that the Audit Core Team has started the CSP contract compliance audit. He said the auditors would like the Governing Board to appoint a group to draft a confidentiality agreement to eliminate any disagreement on access to CSP records. Mr. VanDevender suggested asking Prof. Jim Nehf for help drafting an agreement. Commissioner Bruce Johnson said he would work with Prof. Nehf on this issue. President Doyle assigned the issue to the Executive Committee so that Commissioner Bruce Johnson could work with Prof. Nehf through that process.

President Doyle adjourned the meeting at 11:10 AM.