

Minutes of the December 17, 2009 meeting of the
Streamlined Sales Tax Governing Board

Welcome and Roll Call of Member States:

President John Doyle called the meeting to order at 10 AM central. All member states were present.

Approval of minutes from September 30, 2009 meeting:

Secretary Joan Wagon moved the approval of the September 30, 2009 meeting minutes (MM09002). The motion was approved on a voice vote.

Referral of Introduced Proposals to Committees/Councils for Study:

Exemption certificates – AM09023

Mr. Bill Riesenberger said Ohio sponsored this on behalf of the Business Advisory Council (BAC). President Doyle assigned this issue to the State and Local Advisory Council (SLAC).

Final Action on Amendments from Previous Meeting:

Membership – AM09021 and RP09014

Mr. Scott Peterson explained that North Dakota had requested a second vote on AM09021 so that rule RP09014 could be drafted to establish the criteria that would be used by future Governing boards when admitting an associate member. Ms. Susan Mesner asked the definition of the meaning of “majority” in relation to being in compliance with sourcing. Secretary Wagon suggested that there might be a vote on each requirement before a state is brought onto the Board. In response to a question from Representative Pete Anderson concerning how this amendment and rule differed from the current process, Mr. Peterson said it was possible to read the Agreement to mean that there was no such thing as an Associate Member because all the existing provisions expired. He said this amendment and rule would put into the Agreement the same criteria used in 2005 when the first associate states were admitted.

Mr. Fred Nicely commented that it was possible to read the Agreement to say that associate membership existed under the origin sourcing provisions. He said the business community would prefer that associate states comply with the rounding provision. Mr. Peterson commented that if rounding was a requirement Florida and Maryland would never apply for associate membership as it was their primary issued. Mr. Nicely said that having a deadline by which associate state membership would end was thought to provide and incentive to help states achieve substantial compliance. Mr. William Riesenberger said he understands why Florida and Maryland have not joined as switching their rounding rule was a severe revenue hit.

Secretary Wagon moved the adoption of RP09014. She said the rule makes it clear and transparent what the Governing Board must do when admitting a state to the Board. That motion was approved on a roll call vote of all member states with 21 states voting yes and Wisconsin voting no.

Secretary Wagon moved the adoption of AM09021. Mr. Fred Nicely said the Business Advisory Council (BAC) would like to propose a change to the contingent membership to make sure that a contingent member would have to meet the requirements of associate members. Senator Cook asked why a contingent member would need to meet the requirement of an associate member since they are in full compliance waiting for their effective date. Mr. Nicely said that a state could have a last minute change that would take them out of compliance right before they are brought on as a full member and the language should say that they can be a full member if they are still in full compliance. Commissioner Bruce Johnson suggested that this be approved and Mr. Nicely can propose an amendment later. Secretary Wagon expressed concern about amending this on the fly and agreed with Commissioner Bruce Johnson about the need to pass this.

Mr. Steve Kranz noted that the BAC was happy that all associate states would go through the annual compliance review. Mr. Riesenberger and Commissioner Bruce Johnson said their states looked forward to the annual review. Ms. Sherry Hathaway said that Tennessee has always been part of the annual compliance review. Secretary Wagon's motion was approved on a roll call vote of full member states with nineteen states voting yes and Wisconsin voting no.

Reports of committees:

Finance Committee: 1st Quarter Financial Report

Mr. Richard Dobson said that the first quarter report was complete except for the September 2009 Governing Board meeting. He said the budget was where it should be at one-fourth of the way through the year. Mr. Dobson moved the acceptance of the first quarter financial report. That motion was approved on a voice vote.

Compliance Review and Interpretations Committee: Interpretation request relating to breakfast cereal and breakfast bars – IO09006

Mr. Myles Vosberg explained that the Compliance Review and Interpretations Committee (CRIC) asked the State and Local Advisory Council (SLAC) to conduct research on this request. Ms. Sherry Hathaway explained that SLAC conducted research on the different items and wrote an issue paper explaining why breakfast cereal is not candy. She said the primary reason is because breakfast cereal is not sold in bars, drops, or pieces. Mr. Vosberg said CRIC adopted SLAC's recommendation.

Senator Dwight Cook moved the adoption of IO09006. In response to a question from Mr. Tom Atchley on whether it would be candy if it was made into a bar, Ms. Hathaway said there bars commonly thought of candy bars that are not candy because they contain rice flour. The motion

was approved on a roll call vote of full member states with nineteen states voting yes and Iowa voting no.

Report on State Compliance:

Mr. Myles Vosberg explained that states submitted their compliance documents by August first, Governing Board staff reviewed the documents and submitted comments to CRIC and the states, the public and the states were given an opportunity to comment and CRIC made a decision on each state. He said a couple issues (one-way paging and which taxes are include in the definition of sales price) were identified but excluded from the review because CRIC requested additional input from SLAC and BAC.

Mr. Vosberg reported that CRIC was recommending that Iowa and Indiana be found out of compliance. Mr. Nicely commented that this year's review went much smoother than the year before. He suggested changing the current compliance rule because there was no ability for the Governing Board to find a state out of compliance unless CRIC recommends that they be found out of compliance.

Senator Cook moved that Indiana be found out of compliance. That motion was approved on a roll call vote of full member states with nineteen states voting yes and Indiana abstaining. Senator Cook moved that Iowa be found out of compliance. That motion was approved on a roll call vote of full member states with nineteen states voting yes and Iowa abstaining.

Proposed Amendments to SSUTA for Discussion and Possible Action:

Good Faith – AM09017A01

Ms. Hathaway explained that AM09017A01 repeals a reference to multiple points of use, allows a state to provide retailers more than 90 days after a sale to obtain exemption certificates, defines "good faith" for when a retailer does not provide an exemption certificate until 120 days after a sale, and clarifies the requirement on states to provide liability protection to retailers. Mr. Kranz said the BAC would like two changes to the proposal. He said the first change was to eliminate "is reasonable for the purchaser's type of business" in Section 317 (D) (1) (a). He said that it adds undue burden. He said the second change was to eliminate "or had reason to know" from the last two sentences of 317 (D) (2). President Doyle suggested that the phrase read "could reasonably be expected to know". Ms. Hathaway said that she didn't have a problem with that but thought what the states are asking is reasonable during the audit period. Mr. Dobson said that he would prefer more time to consider the amendments and Mr. Kranz suggested deferring the AM09017A01 to another meeting. Ms. Hathaway countered that this version received significant approval in SLAC and that SLAC would be happy to review their amendment at a later date. Commissioner Jerry Johnson agreed with Ms. Hathaway and suggested the BAC propose their amendment at another meeting.

Ms. Hathaway moved approval of AM09017A01. That motion was approved on a roll call vote of full member states with nineteen states voting yes and Wyoming voting no. Ms. Hathaway

asked if this requires a second vote. Mr. Dobson said that Kentucky will have to change its law and because of that Mr. Peterson said that it will require a second vote.

Proposed Rules for Discussion and Possible Action:

Annual Recertification – RP09011A01

Mr. Myles Vosberg said that RP09011A01 is a rewrite of the rule governing the annual recertification process. He said the primary change is to establish a process that gets the work done in time so that states can make any necessary changes in the next legislative session. Mr. Nicely said that this rule creates a timeline and written procedures and guidelines. Mr. Nicely suggested an amendment and that it be renumbered. In response to question from Commissioner Jerry Johnson on whether an April amendment would be in time to use it for the next review, Mr. Vosberg said it would because the review doesn't start until August.

Ms. Hathaway moved the adoption of RP09011A01. That motion was approved unanimously on a roll call vote of all member states.

New Business:

Mr. Fred Nicely moved that Nevada be found out of compliance because they do not allow ACH credit. Mr. Myles Vosberg agreed that Nevada does not and cannot at this time accept ACH credit. Commissioner Bruce Johnson said that it's possible that CRIC felt they were bound by the Governing Board's decision last year that Nevada was in substantial compliance. President Doyle suggested holding a Governing Board teleconference to deal with this issue and any other possible issues that arise. Mr. Fred Nicely withdrew the motion.

Senator Cook said he would like SLAC to review the issues around on-line travel companies. President Doyle suggested Senator Cook chair a task force to look into this issue. Senator Curt Bramble and others volunteered to work on this. Mr. Nicely said he would get people from the BAC to work on this issue as well.

Adjournment:

Senator Curt Bramble moved to adjourn the meeting at 12:10 pm.