

Streamlined Sales Tax Governing Board

November 8 and 17, 2010

Telephonic Meeting

President Jerry Johnson called the meeting to order at 2:00 PM central on November 8, 2010. All member states were present except Rhode Island, Tennessee, and Vermont. President Jerry Johnson called the meeting to order at 10:00 AM central on December 17. All states were present and voting except Indiana, Vermont and Utah.

Other taxes on communications services – AM10013

President Johnson explained that this amendment would put into the SSUTA the minimum simplifications states must enact for their taxes on communication services. He said that there was new language being discussed and there would not be action taken at this meeting. In response to a question from Mr. Richard Dobson President Johnson said the amendment was intended to implement a similar provision that would go into federal legislation.

Rule on communications services – RP10010

President Johnson said this rule would also be taken up at a later meeting.

Compensation – AM10014A01

President Johnson explained that this amendment increases the compensation states must pay to a new remote sellers with gross national remote sales no more than \$5 million dollars. He said this is intended to better off-set the transition costs for those who start collecting and would be paid for six months after they start collecting and after that time the seller would receive the normal state compensation. He thanked Ms. Stacey Strawn for the useful information regarding the costs that some small sellers will face. He said a lot of the expenses that sellers might face related to using a CSP or incorporating software into their systems will be eliminated when the current providers of the systems change them to incorporate sales tax administration.

In response to a question from Ms. Jane Page, President Johnson said the registration system will have to include a representation from the seller of which states they do not have an obligation to collect in so that states now which are remote sellers.

Ms. Page said there will be sellers that are required to register but don't and keeping track will be difficult. President Johnson explained that a seller will only be compensated for 6 months after

they register, but they have to register within the first 12 months that the state has collection authority. Mr. Richard Dobson said that the 12 month window will make it manageable.

Ms. Stacey Strawn thanked President Johnson for the opportunity to discuss this issue. She said that at best the 20% bonus will cover only one fifth of her cost to adapt her three systems. She said the additional compensation is a step in the right direction, but is not enough for businesses like her. She said the best solution is for a \$5 million small business exception.

President Johnson moved the adoption of AM10014A01. That motion was approved unanimously on a roll call vote of full member states with Rhode Island and Vermont absent. President Johnson said the second vote would be taken at the December meeting.

Rule on compensation – RP10011

President Johnson deferred the rule until a later date.

Amendment relating to the small seller exception – AM10012

President Johnson moved adoption of AM10012. He said this amendment establishes the process the Governing Board will use to set and then evaluate the small seller exception. That was approved unanimously on a roll call vote of full member states with Rhode Island and Vermont absent. President Johnson ruled that this amendment places no additional requirements on any state and does not require a second vote.

Rule relating to small seller exception – RP10012A01

Secretary Joan Wagon said this rule sets the small seller exception at \$500,000 and establishes the detailed process the Governing Board will use to evaluate the need to change the small seller exception. She said that sellers would annually calculate their gross remote national sales and collect or not collect according to whether or not they were above or below the exception.

Mr. Michael Eschelbach said that no state would ever know if a seller was above or below the threshold and is concerned that it is unenforceable. He said he would like to see a way to figure out how many of the sellers fit into this category. Secretary Wagon said every seller would register to start collecting or register to prove they qualify for the small seller exception. Delgate Doyle said that he agrees with Mr. Eschelbach and he thinks that requiring those sellers to register will give ammunition to the opponents. President Johnson disagreed with this conclusion. Secretary Wagon said that the registration system is the only information we are going to have and we need accurate data.

President Johnson asked for unanimous consent to have the wording in the amendment changed “exemption” to “exception” capitalized.

Mr. Eschelbach made a motion that subsection D be removed from the proposed rule. Commissioner Bruce Johnson asked if the concern was with the substance or the procedure and

Mr. Eschelbach said that it's a little of both. He feels that the lack of procedure is a concern, but the framework seems to be too big and not workable. President Johnson said that Mr. Eschelbach has raised some general concerns and there are areas that we need to determine whether or not it's workable. He urged the states to vote against the motion at this time. In order for this to go into effect, federal legislation needs to be passed and then there is 6 months before collection authority begins. Ms. Page said that there are parts of subsection D that she would like to see voted out.

The motion by Mr. Eschelbach to remove section D failed on a roll call vote of all member states with seventeen states voting no, Indiana, Michigan and West Virginia voting yes, and Rhode Island, Tennessee, and Vermont absent.

Secretary Wagon moved the adoption of the rule as changed. That motion was approved on a roll call vote of full member states with seventeen states voting yes, Michigan voting no, and Rhode Island and Vermont absent.

Federal Compensation Language Draft – MC10017

President Johnson said that he thinks the issues that have stood in the way of full support of the Main Street Fairness Act have been addressed. He said MC10017 is the compensation language the Governing Board would ask replace the place-holder language in the draft Main Street Fairness Act. President Johnson moved that the Governing Board recommend to the sponsors of The Main Street Fairness Act to include this language in the federal legislation. The motion passed on a voice vote.

President Johnson moved to continue the meeting until December 17 at 10:00 AM central. The motion was approved on a voice vote.

Communication Tax Language Draft – Section 315.1

President Johnson explained that this amendment would put into the Agreement the communication tax compromise. He said it would require a state to apply the Agreement's requirement on data bases, refund procedures, liability relief and the taxability matrix to other communication taxes. He said that similar language would need to be put in federal legislation. President Johnson moved that Section 315.1 be moved to the State and Local Advisory Council to evaluate and to develop an interpretative rule. That motion was approved on a voice vote with nineteen states voting yes, Michigan voting no, and Indiana, Utah and Vermont absent.

Federal Communication Tax Language Draft – Section 315.2

President Johnson said Section 315.2 provides for the amount of compensation states must provide to those who provide communication services. He said this includes a provision that lets a state cap the amount of compensation to these service providers. Mr. Michael Eschelbach said that Michigan does not think the Agreement should apply to any taxes other than sales and use

taxes and they will vote against it. Mr. Russ Brubaker reminded everyone that after working with states, local governments, and the communication industry, we have come a long way on this and it should be supported. Mr. Richard Dobson said he is concerned that adopting this language to obtain remote collection authority presumes that without the language there is no remote collection authority. He said this could lead to issues in the future. That motion was approved on a voice vote with nineteen states voting yes, Michigan voting no, and Indiana, Utah and Vermont absent.

Main Street Fairness draft – MC10020

President Johnson said this draft incorporated the communication and compensation language previously approved by the Governing Board. He said there is provision that would allow the Governing Board to regulate the communication tax provisions on non-member states if those states so wished. Those states would then get collection authority on taxes on communication services according to the Agreement.

President Johnson said he thinks the best way to move forward is to adopt one or both of these as a working version and assign it to the Executive Committee to continue work. Secretary Joan Wagon said that she would prefer version 2 and Mr. Brubaker concurred.

President Johnson moved to adopt version 2 of the federal legislation as a working version and assign it to the Executive Committee for further work. The motion passed on a voice vote with Michigan voting no.

New Business

Mr. Scott Peterson reminded everyone that there is a Governing Board Meeting scheduled on December 13th.

Mr. Peterson reported that he had signed a hotel contract for May 17th-19th 2011 in Washington, DC for the Spring Governing Board meeting.

Mr. Peterson said the Executive Committee would meet on Wednesday, December 8th at 3 PM Central.

The meeting was adjourned at 10:45 AM Central.