Minutes of the

Governing Board Meeting

December 13, 2010

(Conducted by Teleconference)

Welcome and Roll Call of Member States:

President Jerry Johnson called the meeting to order at 11:00 AM. All member states were present and voting except Indiana and Tennessee.

Approval of minutes from October, 2010 meeting:

Iowa moved approval of the October 2010 minutes (MM10004) of the Streamlined Sales Tax Governing Board. That motion was approved on a voice vote.

Final Action on Amendments from Previous Meeting:

- **Bonus vendor compensation – AM10014A01**

President Johnson explained that this amendment was approved at the last meeting and requires a second vote. President Johnson moved the second vote on this amendment. That motion was approved on a roll call vote of full member states with seventeen states voting yes, Indiana and North Carolina absent and Iowa abstaining.

- **Filing returns and making remittances – AM10009**

President Johnson explained that this amendment was approved at a previous meeting and requires a second vote. Mr. Fred Nicely said the Business Advisory Council appreciates the work on this amendment.

Mr. Russ Brubaker moved the second vote on this amendment. The motion was approved on a roll call vote of full member states with eighteen states voting yes and Indiana and North Carolina absent.

Reports of committees:

- **Finance Committee**
  FY2011 First Quarter Financial Report

Mr. Richard Dobson explained that the Governing Board expenses and income during the first 3 months of the fiscal year were in-line with the adopted budgeted. Mr. Richard Dobson moved to accept the 1st quarter's financial report. That motion was approved on a voice vote.

• **Executive Committee**

Report on the Main Street Fairness Act (MC10020)

President Johnson explained the communication tax and compensation amendments to the Main Street Fairness Act to take the place of the place-holder language in the introduced version. He said the communication tax amendment would establish the guidelines for states that want to simplify their local communication taxes.

President Johnson said that the primary change to the compensation section is that previous versions required compensation with no specifications and the new version defines that there is a minimum amount. He explained the work to establish a definitive proposal that calculates how much each state would have to provide.

President Johnson said he thinks the Governing Board should take a position on what the Board thinks is reasonable in Federal legislation. He said it was difficult to publically say the states support Federal legislation without the Governing Board taking action to support a bill. Senator Dwight Cook moved that the Governing Board support this version of the Main Street Fairness Act.

Ms. Mary Cameron said Arkansas cannot support this version because of the communication tax language. She said her state did not believe the two issues should be linked. Mr. Brubaker said Washington feels very differently and thinks the two issues are compatible. He said this version is much more reasonable than those in the past.

Mr. Dobson said Kentucky would like language added that says the Main Street Fairness Act does not infer that it is the only way to require sellers to collect.

Senator Cook's motion was approved on a roll call vote of all member states with eighteen states voting yes, Arkansas, Michigan and Ohio voting no, and Indiana and Tennessee absent.

- **Report on other communication taxes (AM09002A07)**

President Johnson said this amendment was not listed as an action item and would appear on the agenda as an action item at the next meeting.

- **Discussion of issues facing sellers with many exempt sales**

President Johnson referred this issue to the State and Local Advisory Council.

• **Compliance Review and Interpretations Committee**

- **2010 State Recertification Report - CM10001**

Mr. Myles Vosberg explained the processed used by the Compliance Review and Interpretations Committee (CRIC) to evaluate a state's compliance and explained the five issues carried over from the 2009 review were not resolved by the August 1, 2010 recertification date and were not considered during the 2010 review.

Mr. Myles Vosberg reported that the CRIC did not find any compliance issues with Iowa, Kansas, Kentucky, Nebraska, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, and Wisconsin.

President Johnson asked Mr. Vosberg to explain the compliance issues in the remaining states. Mr. Brubaker asked that at some point those who disagreed with the CRIC decision on the states found in compliance be allowed to report those differences.

Arkansas

Mr. Vosberg said the rule providing for use of a blanket exemption certificate only applies to resellers and must apply to all exemptions. Ms. Cameron said the state allows a blanket exemption for all exemption, but their only rule only talks about resale. Mr. Nicely said that the rule seems to limit the option to only resale and Ms. Cameron said that they don't interpret the rule to limit the blanket certificate only for resale.

Mr. Vosberg said that Arkansas has agreed to make the necessary changes to clarify this and moved that Arkansas be found out-of-compliance so the issue is not back next year. Mr. Dale Vettel said that he firmly believes that Arkansas is in substantial compliance.

The motion to find Arkansas out-of-compliance failed on roll call vote of full member states with Kansas, Minnesota, South Dakota, Washington, and Wyoming voting yes, Iowa, Kentucky, Michigan, Nebraska, Nevada, New Jersey, North Carolina, Oklahoma, Rhode Island, Vermont, West Virginia, and Wisconsin voting no, and Indiana and North Dakota absent.

Indiana

Mr. Vosberg reported that the issues in Indiana deal with relief from liability, prepaid calling, and sale or rental of durable medical equipment. Mr. Tom Connelly said that they are prepared legislation to address the issues.

Mr. Nicely said that the state's refund process requires the purchaser to go to the state. Mr. Connelly said that the purchaser can go to the seller but it's up to the seller on whether or not they would like to give a refund. Mr. Nicely said that if the seller has the option, then they do not comply with Section 325. Mr. Vosberg said the determined the refund issue was resolved.

Mr. Vosberg moved that Indiana be found out-of-compliance relating to relief from liability, prepaid calling and the sale or rental of durable medical equipment. The motion to find Indiana out-of-compliance was approved on a roll call vote of full member states with seventeen states voting yes and North Carolina and North Dakota absent.

Mr. Nicely moved to find Indiana out-of-compliance with customer refund procedures. Commissioner Bruce Johnson asked Mr. Nicely to withdraw his motion given the possible unintended consequences. Mr. Nicely asked that his motion be withdrawn for future review.

Michigan

Mr. Vosberg said there is no provision to source private communications service and the statute sourcing mobile services uses the term “mobile wireless service” instead of “mobile telecommunications service” which is the term used in the Agreement. He said the definitions for the two terms are not the same as mobile telecommunications service has a wider application.

Mr. Michael Eschelbach stated that since they have only one tax rate and Michigan only taxes intrastate communications that there is no need for them to have this sourcing rule. He said that Michigan uses a different term but they define it the same. He said that no one has been able to identify any significant difference. In response to a question from Mr. Nicely about how Michigan knows what communication taxes are only intrastate if the sourcing definitions have not been adopted, Mr. Eschelbach said they look at where the calls starts and ends. Mr. Vosberg said he didn’t recall the conversation on the intrastate only issue, but he agrees with Mr. Eschelbach conclusions.

Mr. Vosberg moved that Michigan be found out-of-compliance on the mobile communication issue. Mr. Nicely moved to amend that motion to include how Michigan sources the sale of electronically downloaded (or remotely accessed) software at the billing location instead of the known location(s) where the product was received or from which it was accessed and that Michigan taxes remotely accessed software through its imposition on tangible personal property.

Mr. Eschelbach said that Michigan does not believe they violate the Agreement in how they source electronically delivered software. Mr. Nicely reported that this is a very complicated issue and it should be assigned to the State and Local Advisory Council.

The motion by Mr. Nicely to amend the motion failed on a voice vote. In response to a request from Mr. Mark Nebergall, Mr. Brubaker said that the State and Local Advisory Council should look at the items in Mr. Nicely’s motion.

The motion by Mr. Vosberg to find Michigan out-of-compliance failed on a roll call vote of full member states with Arkansas, Kansas, Oklahoma, South Dakota, and Wyoming voting yes, eleven states voting no, and Indiana, North Dakota, and Vermont absent.

Minnesota

Mr. Vosberg said that Minnesota taxes ring-tones differently than it treats other digital goods and they do not have language relating to how to apply tax when the tax rate changes in the middle of a billing cycle.

Mr. Jack Mansun said that in total Minnesota does not believe they are substantially out-of-compliance. He said they would try again to exempt ring tones during the next legislative session. He also said they would try to change the language relating to rate changes.

Mr. Vosberg moved that Minnesota be found out-of-compliance on the ring tone and date issues. That motion was approved unanimously on a roll call vote of full member states with North Dakota absent.

Nebraska

Mr. Vosberg reported that there were no issues regarding Nebraska. Mr. Brubaker said Washington would like to discuss an issue about digital goods. Mr. Tim Jennerich said some on the committee had questions about how Nebraska treated electronic mailing lists. Mr. Nicely said Nebraska taxes electronic mailing lists, which are digital goods, as tangible personal property. Mr. Vosberg said the issue was discussed and the committee did not see it as a compliance issue.

Mr. Tom Gillaspie said Nebraska disagreed that this was a compliance issue and Mr. Nicely said that he can't see how this cannot be a compliance issue.

Mr. Nicely moved to find Nebraska out-of-compliance on the electronic mailing list issue. That motion failed on a roll call vote of full member states with Oklahoma and Washington voting yes, fifteen states voting no, and Indiana and North Dakota absent.

Nevada

Mr. Vosberg explained that the issues with Nevada are the definition of receipt is incomplete, provision in drop shipment that requires that the resale certificate be taken in good faith, they use a medical term not defined in the Agreement, and they cannot accept ACH payments.

Mr. Dino DiCianno said Nevada would move forward to correct the issues. He asked that the committee's report be amended to delete an item that had no basis in fact and is not true. President Johnson moved that item number nine on the Compliance Review and Interpretations report be removed. That motion was approved on a voice vote.

Mr. Vosberg moved to find Nevada out-of-compliance on items listed. That motion was approved unanimously on a roll call vote of full member states with Indiana and North Dakota absent.

New Jersey

Mr. Vosberg said New Jersey taxes "digital products" which it defines as "electronically delivered music, ringtones, movies, books, audio and video works and similar products, where the customer is granted a right or license to use, retain or make a copy of such item." The statute does not specifically address whether it taxes sales for less than permanent use or based on continued payment. Ms. Denise Lambert-Harding said they are working on a legislative change. Mr. Nicely said that New Jersey is out-of-compliance on the issue until legislation is passed.

Mr. Vosberg moved that New Jersey be found out-of-compliance on the digital products issues. That motion was approved unanimously on a roll call vote of full member states with Indiana and North Dakota absent.

North Carolina

Mr. Vosberg said North Carolina's definition of "receive" and "receipt" do not have the words "or taking possession or making first use of digital goods" and their statute for services covering periods before and after the statutory effective date is incorrect.

Mr. Eric Wayne said they are seeking a legislative solution.

Mr. Vosberg moved that North Carolina be found out-of-compliance on the two issues. That motion was approved unanimously on a roll call vote of full member states with Indiana and North Dakota absent.

North Dakota

Mr. Richard Cram said North Dakota's definition for "fixed wireless service" is incorrect and uses the definition for "mobile wireless service." Mr. Vosberg said their rule was incorrect, but overall felt they were in substantial compliance with the Agreement. Mr. Vosberg said that they have this definition in a rule and they will be changing the language in the rule and not in legislation.

Mr. Brubaker said that when the state says they are out-of-compliance then the Board should vote accordingly. Delegate John Doyle said that if they say they need to change a statute or rule to come into compliance, then they are out-of-compliance and should be found so. Commissioner Bruce Johnson argued against finding a state out-of-compliance every time they go for clarifying legislation.

Mr. Richard Cram moved to find North Dakota out-of-compliance because of the wireless rule. That motion failed on a roll call vote with Washington voting yes, seventeen voting no, and Indiana absent.

Ohio

Mr. Vosberg said the Ohio issues were a pending rule that strikes definitions of needed for sourcing private communications service and a missing word in their bad debt rule.

Ms. Phyllis Shambaugh said these were inadvertent errors they can correct administratively. Mr. Vosberg said these issues probably existed when they were admitted, but this review was very thorough.

In response to a question from Mr. Nicely about digital goods, Ms. Shambaugh said there had been an error in their taxability matrix.

President Johnson said that as an associate state their compliance had not been reviewed since their membership. President Johnson moved to notify Ohio that these issues need to be resolved in order to come into full membership. That motion was approved on a voice vote.

Oklahoma

Mr. Vosberg said there were no issues with Oklahoma but the state recognizes they did not understand the sourcing of prepaid wireless calling and are looking into modifying the way they handle it.

Mr. Nicely moved that Oklahoma be found out-of-compliance on the wireless sourcing issue. That motion failed on a roll call vote of full member states with seventeen states voting no and Indiana and North Dakota absent.

Tennessee

Mr. Vosberg said this was the first time Tennessee had been subject to the recertification process since becoming an associate state. He said the issues identified, in addition to the known issues, included having bundling language in their sales price definition and they don't have language for the 90 and 120 day exemption certificate provision.

Ms. Hathaway said the 90 and 120 day requirement was difficult for them because they currently don't impose any time limitations on retailers providing exemption certificates. Mr. Nicely said the business community would like to see the 90 days and 120 days language in statute or rule.

President Johnson moved to notify Tennessee of these compliance issues must be resolved before they can become full members. That motion was approved on a voice vote.

Utah

Mr. Nicely said that while the Compliance Review and Interpretation's Committee did not report any compliance issues the Business Advisory Council feels that Utah is out-of-compliance because of how they source electronically delivered software and because they seem to treat electronically delivered software as a product delivered electronically instead of as tangible personal property. Commissioner Bruce Johnson said these issues have been submitted to the legislature.

President Johnson moved that Utah must resolve these issues before becoming full members. That motion was approved on a voice vote.

Wyoming

Mr. Vosberg said the issues were the requirement to provide 90 day and 120 days to obtain an exemption certificate and the effective date for rate changes occurs during a service billing period. Mr. Vosberg said Mr. Dan Noble acknowledged the issues and would be working on legislation.

Mr. Vosberg moved to find Wyoming out-of-compliance on these two issues. That motion was approved unanimously on a roll call vote of full member states with Indiana and North Dakota absent.

Proposed Amendments to SSUTA for Discussion and Possible Action:

- **Additional remittances – AM09014A03**

Mr. Nicely explained that this amendment changes the process used by states that require more than one payment a month from a business. He said that even though there is a provision in the Agreement there are differences between the states. Mr. Nicely said it is difficult to provide uniformity when no state is willing to make any changes to their laws. President Johnson reminded everyone that this will require two votes.

Ms. Harrell Hathaway moved the adoption of AM09014A03. The motion failed on a roll call vote of full member states with Arkansas abstaining, Kansas, North Carolina, Oklahoma, South Dakota, Washington, West Virginia, Wisconsin and Wyoming voting yes and Iowa, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, and Rhode Island voting no.

- **Rates and bases – AM10015**

Mr. Peterson said that this amendment will harmonize two sections in the Agreement. He said Sections 302 and 308 impose requirements on states but include nearly identical exceptions from those requirements. He said there has always been a question on why the language wasn't identical. He said no state would need to change.

Kentucky moved to adopt the amendment. Mr. Nicely said there was some concern that the purpose of the amendment was to make a change in order to bring another state in. That motion was approved unanimously on a roll call vote of full member states with Indiana, Minnesota, North Dakota, and Vermont absent.

Proposed Rules for Discussion and Possible Action:

- **Governing Board notice requirements – RP10013**

Mr. Peterson said when the Governing Board moved the meeting notice from 60 days to 30 days this rule didn't get changed. He said it changes the notice requirement for noticing amendments from 30 days to 60 days to correspond with the 30 day meeting notice requirement.

Representative Pete Anderson moved the adoption of RP10013. That motion was approved on a roll call vote of all member states with Indiana, Minnesota, North Dakota, Ohio, Utah and Vermont absent.

- **Vendor compensation – RP10008A02**

President Johnson reported that the vendor compensation rule was still under discussion.

President Johnson adjourned the meeting at 2:00 PM Central.