

Streamlined Sales Tax Governing Board

May 18, 2011

Arlington, VA

Welcome and Roll Call of Member States:

President Luke Kenley called the meeting to order at 1:00 PM Eastern. All member states were present and voting except Ohio and Rhode Island.

Approval of Minutes from November 2010 and December 2010:

Delegate John Doyle moved the approval of the minutes from the November 2010 (MM10005) and December 2010 (MM10006) meetings. That motion was approved on a roll call vote.

Referral of Introduced Proposals to Committees/Councils for Study:

- **Prepaid Calling Services - RP11005**

Ms. Deborah Bierbaum requested that the Governing Board look into a difference of opinion among the states regarding prepaid calling cards sold in units or dollars. She explained that as long as the unit declines with time it fits the definition but a unit does not have to be a period of time. Senator Kenley asked that the State and Local Advisory Council work with Ms. Bierbaum to find a solution to this issue. Mr. Scott Peterson explained that a typographical error existed in the Library of Definitions regarding this issue. He said that unfortunately any state that adopted the definition without realizing the error will have to change their law.

Reports of Committees:

- **Finance Committee**

 - **Second Quarter Financial Report - FC11001**

Mr. Richard Dobson reported that the Governing Board's budget was going according to schedule. He said this quarter the Governing Board spent \$66,440 for salary and benefits, \$20,385 for employee travel, and \$101,402 for office expenses and contractual services. Mr. Dobson moved to accept the Financial Report FY2011. That motion was approved on a voice vote.

- **Executive Committee**

 - **Main Street Fairness Act**

President Kenley gave a brief update on the progress lobbying Congress and said a new way to lobby was needed. He said many people support the bill and they think it would have a better chance if it's inserted with another bill dealing with budget or tax reform. Quoting Mr. Warren Townsend, President Kenley said the effort needs a lobbying quarterback.

Senator Curt Bramble explained that he gets favorable reactions when talking to members of Congress. Representative Wayne Harper said Utah Senator Lee seemed to be favorable and wanted to know who else was on board. Representative Harper said Senator Lee is strongly considering co-sponsoring the bill and is going to talk to a few more people about it. Senator Bramble said that an important issue for Senator Lee was the states having a discussion on how they can use the revenue to offset some other tax.

Delegate Doyle explained that we need as much Republican support as we can possibly get. Senator Deb Peters said that no one cares about the fairness argument, but some of South Dakota's delegation did seem to respond to the discussion of tax evasion. She said the delegation responded when told that those not paying use tax are evading their taxes. Senator Kenley said the 'in your face' effort needs to be ramped up.

Mr. Neal Osten said that while there is a lot of talk of support it was critical to get Republican commitments to support. He said that recently former Congressman Bill Delahunt spoke to NCSL and said he always consider the bill to be a Republican Bill that also had Democratic support. Mr. Osten said there was a constant need to for education given there were 1,700 state legislators elected last year. Delegate Doyle said that former Congressman Bill Delahunt suggested a name change of something like 'Small Business Protection Act'. Delegate Doyle suggested 'The Small Business Enhancement Act'.

Ms. Maureen Riehl said that the National Retail Federation and other retail members big and small are disappointed at the lack of attention from Congress and there is a need to do this the old fashion way by never giving up. Ms. Diane Hardt asked for an updated list of businesses that support Streamline to include in the lobbying material. Mr. Gary Goyke said that if this meeting ends today he would be interested in passing out packets on the Hill tomorrow. He said that a weekly call would be helpful.

Litigation to overturn Quill:

Ms. Susan Mesner said there should be a good litigation strategy. Mr. Steve Kranz said it might be useful to circulate Billy Hamilton's article that talks about the Quill and how they came to be as a court case. He stated that history is often a good teacher.

Amnesty

Mr. Russ Brubaker said there is discussion about states offering a new amnesty program. He explained the recent experience of a client of one of the certified service providers (CSP). He

said that the proposal was much like the previous amnesty. He said that the specific company that started this discussion would qualify as a voluntary seller for CSP compensation purposes in almost every state and almost no state would grant them an amnesty. Mr. Charles Collins said the amnesty was the biggest reason businesses joined in the first place.

Mr. Dobson asked if there are any situations where a seller had come forward as a volunteer that has been at risk from the states when contemplating registering with a CSP. Mr. Collins said that he is not aware of any issues of states being unreasonable or unfair on an audit.

Mr. Tom Gillaspie said that Nebraska would need legislation to create an amnesty act and he wondered if it could be limited to just this proposal. He said that Nebraska could work with the taxpayer if they are looking at back taxes.

Commissioner Bruce Johnson said many of the scenarios discussed were legal grey areas. He encouraged us to explore this as an option because there are a lot of sellers out there whose coverage might be large but not necessarily in a particular state. He said we need to be careful that the cost is not higher than the tax collected. Mr. Collins said there are many sellers that registered strictly for the amnesty and we need to make it easy for new sellers to come on board.

Mr. Peterson said that when the Main Street Fairness Act passes among the businesses that rush to register will be people that probably should be collecting tax today. He said that no state would have the capacity to collect the back tax and if a state tried the public outrage could threaten the entire effort. He said the state should prepare to let go of the past.

President Kenley referred the issue to the Executive Committee.

- **Compliance Review and Interpretations Committee**

Mr. Myles Vosberg explained that Georgia resolved all their remaining issues either through legislation or emergency rules. He said that the Compliance Review and Interpretations Committee voted to recommend Georgia as a full member. Mr. Steve Kranz said that the Business Advisory Council is happy that Georgia is here and has done everything they can to become full members. He asked that the issues Georgia resolved be followed up on during the annual recertification process.

Senator Cook moved that Georgia be admitted as a full member. That motion was approved unanimously on a roll call vote with Rhode Island absent

Ms. Amy Oneacre thanked everyone that was involved in the process of helping Georgia come into full compliance.

- **Business Advisory Council**

Mr. Kranz reported that the Business Advisory Council had two new members. He said they were working to make sure that the communication between Business and State continue to flow as easily as always.

Proposed Amendments to the SSUTA for Discussion and Possible Action:

- **Other Communication Taxes - AM09002A07**

Mr. Russ Brubaker explained that this amendment is designed to bring the Agreement into compliance with the Main Street Fairness Act's other communication language. Senator Kenley said that if the Federal bill includes that language we will need to make sure that we adopt this amendment so that we are in full compliance. Ms. Deborah Bierbaum said that we should not move forward yet, but wait and see what happens and then take appropriate action. She asked that this be deferred until a later date.

- **Audit Overpayments - AM09002A01**

Ms. Diane Hardt reported that the states and the business community could not agree on this amendment and she wanted to withdraw the amendment. Mr. Kranz said that the Business Advisory Council was opposed to withdrawing this but would be comfortable deferring it. He said it should remain on the agenda to see how many states follow this procedure and how many don't. He said that the resolution to the issue would depend on whether it would cost the states any money to follow this procedure. President Kenley deferred the amendment to a later undetermined date.

- **Definition of Sales Price - AM10010**

Ms. Jane Page reported that a rule was approved and asked that the amendment be withdrawn. President Kenley announced that the amendment was withdrawn.

- **Definition of Sales Price - AM11001 and AM11001A01**

Ms. Page said the amendment needs more work and asked that it be deferred. President Kenley deferred the amendment to a later undetermined date.

Proposed Rules for Discussion and Possible Action:

- **Definition of Sales Price - RP1007A01**

Ms. Hathaway explained that this rule deals with discounts and what is excludable from the sales price. She said they first looked at creating a toggle but that was rejected by several states and several from the business community. Senator Deb Peters moved to amend the rule by inserting "for which" instead of "from which" in the second sentence, which motion was approved on a voice vote. Senator Peters moved to the adoption of RP10007A01 as amended. That motion

was approved on a roll call vote of full member states with nineteen states voting yes and Rhode Island absent.

- **Compliance Audits - RP11001**

Mr. Bruce Christensen reported that Audit Committee worked with the certified service providers (CSP) to update this rule which governs how the states audit CSPs. He said most of the changes separate the audit requirements for the CSP from the audit requirements for the certified automated system providers (CAS). Mr. Christensen said the states are about to start their fourth round of audits and need the language to include the CAS providers. Delegate Doyle moved the adoption of a few grammatical and punctuation changes, which motion was approved on a voice vote. Mr. Charles Collins said that they feel the language is much better than it used to be. Mr. Tom Gillaspie moved the adoption of RP11001 as amended. That motion was approved on a roll call vote of full member states with nineteen states voting yes and Rhode Island absent.

- **Definition of Food and Food Ingredients and Candy - RP11002**

Ms. Page explained that the rule was designed to eliminate inconsistent interpretations by states and to eliminate the odd circumstances of a strict interpretation of this definition. She said for example, a strict interpretation would classify beef jerky as candy because it is sweetened. Mr. Craig Johnson said the language in the rule requires that the definition be used to determine whether or not things commonly thought of as candy are in fact candy. He emphasized that the definition of candy is not to be used to determine whether or not things not thought of as candy are candy, such as meat products, cereals, etc. Mr. Craig Johnson said rule also includes a list of products and classifies them as candy or not as candy. Ms. Page reported a unanimous vote on the rule by the State and Local Advisory Council. Ms. Diane Hardt moved the adoption of RP11002. That motion was approved on a roll call vote of full member states with nineteen states voting yes and Rhode Island absent.

- **Definition of Sales Price - RP11003A01**

Ms. Jane Page requested that RP11003A01 be deferred. President Kenley deferred the amendment to a later undetermined date.

- **Receipt of Personal Care Services - RP11004**

Ms. Page reported that this rule explains how to source services that are performed on the physical human body. Senator Peters moved the adoption of RP11004. That motion was approved on a roll call vote of full member states with nineteen states voting yes and Rhode Island absent.

- **Certification Rule - RP11006**

Mr. Gary Centlivre explained that the Certification Committee proposed the changes in the two appendixes to bring them closer to how the states actually certify future certified service providers. He said the committee is recommending that the merger of the two appendixes. Mr. Charles Collins reported that he worked with and agrees to the Certification Committee changes. Mr. Brubaker moved the adoption of RP11006. That motion was approved on a roll call vote of full member states with nineteen states voting yes and Rhode Island absent.

New Business:

Senator Bramble said the Governing Board should take action to increase state attendance. He said only six states had legislators in attendance at this meeting making it the lowest legislative attendance. Mr. Brubaker commented that some legislatures are still in session, but he agreed with Senator Bramble. Senator Bramble commented that when the Main Street Fairness Act passes those legislative sessions would be a lot less difficult.

President Kenley adjourned the meeting at 3:50 PM.