

Streamlined Sales Tax Governing Board Meeting

August 31, 2011

Teleconference

Welcome and Roll Call of Member States:

Senator Luke Kenley called the meeting to order at 10:02 a.m. All member states were present.

Update on Federal legislation:

Senator Kenley said he wanted to start the meeting with an update on the Executive Committee's work on federal legislation. He said there was a weekly lobbyist conference call to coordinate each organization's efforts. He said that he, Representative Wayne Harper, and Joan Wagon met with Senator Mike Lee of Utah who might be able to help if there is an opportunity this year for the bill to be passed.

Senator Kenley said if there is anything anyone can do in regard to the federal bill they should call the Streamline office.

Senator Kenley said there were two issues on the agenda. He asked Mr. Scott Peterson what kind of vote would be necessary for the two items. Mr. Peterson said any vote on the digital goods resolution would require a majority of all member states. He said the question of whether or not to accept the Issue Resolution Committee's recommendation on Nebraska would require a majority of the full members.

Digital Goods:

Mr. Russ Brubaker explained that a coalition of industry groups had introduced legislation to preempt state authority over how to tax and exempt digital goods. He said Washington and the other sponsoring states thought it was necessary for the Streamline states to express their opinion on federal legislation given its direct impact them. He said Washington sent comments to the sponsor because of the impact the bill would have on Washington law. He said Washington's comments addressed the specific differences between the federal bill and the Streamlined Agreement.

Representative Ross Hunter explained that Washington's digital goods legislation was a 2-year joint effort with the business. He said compliance with Streamline's digital goods provisions actually works and the states should not get stepped on by Congress.

Mr. Bruce Johnson said Utah supported the resolution. He said state sovereignty was better perfected through the SST Agreement. He said he didn't know what the state of digital goods would like in a couple of years and neither did the industry.

Ms. Diane Hart said Wisconsin worked hard to ensure they understood digital goods and to become compliant with the Streamline Agreement. She said Wisconsin preferred to work through SST as opposed to federal legislation.

Senator Deb Peters said South Dakota was happy for the opportunity to discuss this vital issue and to tell the folks in Congress where we stand.

Mr. Jerry Johnson reminded the Governing Board of all the time and work that went into the Agreement's digital goods language, primarily at the request from the digital goods community. He said that there must be mutual agreement among all the parties before moving forward on this bill.

Mr. Brubaker said that the resolution as introduced included a requirement that states must be provided collection authority over the sale of digital goods. He said that most of the business community objected to that provision and he moved the following amendment:

~~“**BE IT FURTHER RESOLVED THAT** the Acts **MUST** provide jurisdictional authority to collect taxes from sellers without physical presence.”~~

BE IT FURTHER RESOLVED THAT Congress has a responsibility to do no harm to state tax structures or to business competitiveness and the Acts **MUST** eliminate the risk of nowhere tax under the proposed Act's sourcing rules even if that means granting states jurisdictional authority to collect taxes from digital goods sellers without physical presence.”

Mr. Brubaker said the amendment addresses the state's concerns that the federal legislation will actually harm their sales tax system and that there may be more than one way of eliminating the “no-where tax” concern.

The motion to adopt the amendment was approved on a voice vote with no one opposed.

Mr. Steve Kranz speaking on behalf of the Business Advisory Council asked that the resolution be deferred to the October Governing Board meeting. He said the coalition supporting the federal legislation wanted further discussions with the states before the states adopted this resolution. He said the coalition believed the intent of the federal legislation was consistent with what is in the Streamlined Sales Tax Agreement. He said the coalition wanted to work with individual states to try and resolve their concerns. He said there was a desire to work out the differences in the language and that a vote today would be premature to try to resolve those issues.

Senator Kenley said it was appropriate if business wants to talk to states but the Governing Board needs to work on this today to ensure that Congress knows where we are. He said he will put the resolution on the October Governing Board agenda for further discussion.

Mr. Mike Bailey said that local governments wanted the other Governing Board members to know how much local government appreciates this Governing Board resolution. He said Congress should not preempt state and local tax authority.

Senator Dwight Cook said that he hoped the Governing Board would go ahead and pass this resolution. He said North Dakota is about the only state that put into law that digital goods were

exempt from tax and the proposed federal legislation would make them change. He said he met with his U.S. Senator about the wide array of federal tax legislation negatively impacting states.

Mr. Brubaker moved the adoption of the amended resolution. That motion was approved unanimously on a roll call vote.

Issue Resolution Committee's recommendation on Nebraska:

Mr. Peterson explained that the Governing Board's rules require the Governing Board to meet and consider the recommendation of the Issue Resolution Committee regarding Nebraska's compliance.

Mr. Bruce Johnson, chair of the Issue Resolution Committee, presented their report. He said the issue is whether or not the Governing Board was correct to not find Nebraska out-of-compliance for the way the state taxes electronically delivered mailing lists. Mr. Johnson explained how procedurally the issue made its way to the Issue Resolution Committee and now back to the Governing Board. Mr. Johnson said the Issue Resolution Committee's recommendation is that Nebraska is substantially compliant with the Agreement.

Mr. Tom Gillespie explained that the issue boiled down to whether the tax on electronically delivered mailing lists violated the requirement that a state not use its definition of tangible personal property to tax something delivered electronically. Mr. Gillespie said the Governing Board knew of Nebraska's rule concerning electronically delivered mailing lists when they were admitted. He said Nebraska felt it could be in rule and not court has said that was incorrect.

Mr. Fred Nicely said that Business Advisory Council and the Governing Board have a common goal of making sure states are in compliance. He said they disagree with the conclusion, but appreciate the time putting together the report. Mr. Nicely said they cannot reach the same conclusion that Nebraska isn't using their definition of tangible personal property to tax items transferred electronically. He said whether or not this can be accomplished by rule doesn't address the issue that they are taxing an electronically delivered product and the only statutes relate to tangible personal property and specified digital products. He said that in addition they believe Nebraska's action has created a burden for taxpayers because they must know that Nebraska put this in regulation and not statute. He said they don't believe the states are taking Nebraska's uniformity very seriously.

Mr. Bruce Johnson thanked Mr. Nicely for the professional manner which he addressed this, but said he must take issue with his comment about uniformity with Section 333. He said the intent of the 2007 amendments was to require states to put taxpayers on notice affirmatively if they intended to tax a digital product or an electronically delivered product. He said Nebraska took steps to put taxpayers on notice that they were taxing electronically delivered mailing lists.

Mr. Jesse Sitz said his firm represented one of the taxpayers. He said the Streamlined Sales Tax has the best uniformity in this area his client wants to keep that in place. He said his client wanted to work with Nebraska to get those issues straightened out. He said he appreciated the amount of time in the preceding and it is very important for his taxpayer.

Mr. Richard Dobson moved that the Governing Board accept the recommendation of the Issue Resolution Committee. That motion was approved on a roll call vote of the full member states with nineteen states voting yes, Minnesota absent and Nebraska abstaining.

There being no further business Senator Kenley adjourned the meeting at 11:39 AM.