

GOVERNING BOARD MEETING

October 5, 2011

Seattle, WA

Welcome and Roll Call of Member States:

President Luke Kenley called the meeting to order at 1:16 PM Pacific. All member states were present and voting except Ohio. Washington Director of Revenue Susan DelBene presented a video from Governor Gregoire welcoming the Governing Board to Washington.

Approval of Minutes from May 20, 2011 and August 31, 2011:

Delegate John Doyle moved the approval of the minutes from the May 2011 and August 2011 meetings. That motion was approved on a roll call vote.

Referral of Introduced Proposals to Committee/Councils for Study:

- **Timing of Governing Board meetings – RP11007**

President Kenley explained the Indiana proposal (RP11007) to give the Governing Board more flexibility to call meetings in response to issues before the Issue Resolution Committee. He said the current rule does not provide the Governing Board the ability to include an issue on a regular Governing Board agenda unless the issue's timing was perfect. He said his proposal would give the Governing Board a range of time in which to call a special meeting if there was no regularly scheduled meeting. President Kenley assigned the proposal to the Executive Committee.

Reports of Committees:

- **Finance Committee**

Treasurer Richard Dobson presented the 3rd quarter financial report (FR11003) and the FY2011 final report (FR11001). Mr. Dobson explained that the year ended very close to what was expected. He said expenses were below budget. He said the page showing expenses from 2003 to 2011 is a good snap shot of the history. He said that while the Governing Board's finances were strong through FY11 that would not be the case by 2013 without changes. Mr. Dobson moved that the two financial reports be accepted. That motion was approved unanimously on a voice vote.

M. Dobson presented an amendment to the FY2012 budget (FR11002). He said it was the Finance Committee's recommendation to amend the current year's budget to reflect the ending expenditures from FY2011. He said that with the amendment the projected ending balance would be \$395,120 instead of \$119,112, which would not likely have happened since FY2012 expenditures are tracking along the FY2011 expenditures. Mr. Dobson moved the adoption of the amendment. That motion was approved unanimously on a voice vote.

Mr. Dobson said there had been a contract dispute between the developer of the central registration system and the hosting company. He said that a result of that dispute was the system not working for three days and an increase in the operating cost of the system. He said the system had cost less than \$10,000 to operate and it would now cost \$35,000. Mr. Dobson moved the adoption of an amendment of the FY2012 budget to increase the amount for the central registration system to \$35,000. That motion was approved unanimously on a voice vote.

Mr. Dobson explained that in developing the proposed FY2013 annual budget (FR11004) the Finance Committee wanted expenditures to track as closely as possible the FY2012 budget. He explained that in FY2013 some items like "Other Travel" would not be as great because there would not be any CSP certification requiring travel by the Core Audit Team. President Kenley expressed his concern that the declining proposed ending balance clearly indicates that income does not match expenditures. He said there will certainly have to be changes to be made. Senator Bramble said the ending balance in the next year would be \$131 without changes. Mr. Scott Peterson informed the Governing Board that member dues for FY2013 would be similar to those of FY2012 although there might be slight changes because the rules require that they be re-calculated based on the total sales tax collections. Mr. Bruce Johnson emphasized that an ending balance of \$100,000 is dangerous and the legislators should understand they will have to deal with that financial problem. Mr. Dobson moved adoption of the FY2013 budget. That motion was approved unanimously on a voice vote.

- **Executive Committee**
 - **Discussion of Federal legislation**

President Kenley updated the Governing Board on the two bills in Congress and the third that would soon be introduced. He said each bill grants states remote collection authority with varying degrees of required simplification. He said Senator Dick Durbin of Illinois introduced the bill historically supported by the Governing Board and Representative Womack introduced a bill with much less required simplification. President Kenley said Senator Enzi and Alexander were preparing another bill intended to be a compromise between the first two.

Mr. Joe Rinzel explained that RILA supports the Market Street Fairness Act (MSFA), but in their opinion it didn't seem that Republicans were on board. He said they felt it was important to have a bill bipartisan sponsorship and that is why they worked to get Representative Womack's bill introduced. He added that he felt having a House bill was already influencing Senate Republicans to come back to the table. He wanted to make a clear point that we support all of the bills and solutions out there. He said we don't necessarily view this bill in front of you as a final product.

Mr. Russ Brubaker said he believes some things, for instance sourcing, must be included in every bill. Senator Balfour said the more bills we have on the table, the more confusing it gets. He said he is concerned that it appears the business community is split on the issue which will make it easier for Congress to do nothing. Senator Cook said Senator Kenley, in his open comments mentioned nineteen requirements in the MSFA bill. He said all of those were negotiated at this table with a two-thirds vote of this body. He asked Senator Balfour if he was suggesting that

Congress should now have that same debate over which ones should stay and which should go. Senator Balfour said no, but that all these negotiations resulted in a Senate bill with only Democrat sponsors, which was not sustainable. He felt that the focus was on trying to build a bipartisan solution, whether the states want to come together as Streamlined states or do it on their own. He added that we need to be able to explain this very simply, as to whether this is something the states need to do. Senator Cook asked, with the two conflicting bills out there how do we determine which should stay and which should go? How do we have our voice as a group as to what would be the right solution? Senator Kenley agreed with Senator Balfour that having too many bills was a problem. Delegate John Doyle said the critical thing is to get collection authority.

Mr. Fred Nicely of the Business Advisory Council (BAC) said having a bill introduced in the House and another in the Senate is confusing and everybody that has an interest here needs to be involved. He said the states need to agree on what is in a final product. He encouraged everyone to focus as much as possible on additional cosponsors, particularly Republican to get to the point where there is enough volume to sway the leadership.

Mr. Bruce Johnson asked Mr. Rinzel if the bill's requirement that states provide software to be is the certified software or a narrow piece that would just address the variation in rates. Mr. Rinzel said the intent was to use the Streamline providers, but he was not sure that was the final answer in terms of state solution. He said whatever the route it needed to be workable. He said they have had conversations with Mr. Charles Collins and Ms. Joan Wagnon on the language in the bill. He said if they did not want small business to be overburdened. Mr. Collins said it was obviously easier with certified providers.

Mr. Roger Geiger of the Federation of Independent Businesses said his organization has articulated several times in front of the Governing Board, NCSL and others of the need for a small seller exception. He said a meaningful exception creates negotiating ability for less simplification or less compensation.

Mr. Brubaker suggested it was time to ask if the one or two significant issues that keep some states from joining are really that important. He said he wasn't suggesting changing the SSUTA, but to determine what is in the SSUTA is what needs to be.

In response to a question from President Kenley Senator Bramble explained that forcing sellers located in states without a sales tax was going to be a difficult hurdle. He said the states should look at making a requirement on their own sellers to collect in member states instead of a national mandate. He said other states would join if the idea had merit and it would avoid offending members of Congress from non-sales tax states. Delegate Doyle said this has always been the proper back-up plan if we could not get support from Congress. He said states would essentially become tax collectors for fellow states. He said this would extend some fairness and we might end up with 30-35 states collectively doing this. He said the problem is what this idea is that it does not bring the sales tax into the 21st century, which in his opinion requires that nexus be abandoned. Senator Bramble said the issue is that in our twelfth year in the making of this right federal legislation isn't moving forward.

Senator Cook reminded everyone that it took the state 50 years to agree on the shape of a stop sign. He said if some states don't support Main Street Fairness because of the requirements the Streamline states should not just support some alternative, but should instead determine if there are items in the SSUTA that no longer serve a purpose. He said if the rounding rule keeps Florida and Maryland out the states need to determine if this is a stop sign issue that will go away with time or something that doesn't need to be a requirement.

President Kenley said that he hoped everyone on the Governing Board would see this as their responsibility and that there is an absolute urgency that exists. He said everyone needs to think about how we can reach some kind of end game. He said we need a much stronger commitment in Congress.

- **Discussion of Resolution of Digital Goods and Tax Fairness Act**

President Kenley said that at the last meeting the Governing Board passed a resolution opposing federal digital goods legislation. He said he agreed to put the issue on this agenda to allow for additional public comments. President Kenley reminded the Board that the concerns expressed in the resolution are real because every Streamline state would have to change if the federal legislation passed as written. Mr. Steve Kranz said the federal bill was intended to be consistent with what happens within Streamlined Sales Tax. He said industry wanted to continue the dialogue with the states and expected to have a memo to the states soon.

- **Discussion of Quill Litigation**

President Kenley said that even though the focus should be on Congress, there should be discussion on what to do if Congress doesn't act. He said a committee would start work on a judicial approach to Quill. He said anyone interested in serving on that committee should contact Russ Brubaker.

- **Discussion of Amnesty Survey Results:**

President Kenley said the Streamline states were surveyed to determine their interest in offering another amnesty like Streamlined states offer in their first year of membership. He said the survey was in response to a question from a retailer with minimal physical presence who wanted to register and use a CSP but wanted some assurance that they would not face past taxes liability. President Kenley said that the other amnesty issue was about how states were going to react when Congress acts and thousands of retailers start collecting with some having had some liability in the past.

In response to a question from Delegate Doyle, Mr. Peterson explained that the amount of physical presence the retailer in question had amounted to a couple traveling sales people. Mr. Bruce Johnson said he wasn't surprised by the state responses given that for many states the nexus standard for physical presence is not one that anyone can look at and know it when they can see it. Senator Cook said he now understood the issue and said he felt somewhat embarrassed that legislators, as policy makers, couldn't make this clearer. Mr. Peterson said several states responded that they would need legislation to implement an amnesty and it was not

something that could be quickly done. He said he was concerned about the outcome if Federal legislation were enacted quickly that most state would be in a very awkward position. Senator Kenley said he thought the Board should follow-up on the survey to have a contingency in place, if federal legislation is passed.

- **State and Local Advisory Council (SLAC) Report**

Ms. Jane Page said SLAC had forwarded to the Governing Board for final consideration several issues, including a rule on candy, a sales price definition revisions, and sourcing of services to tangible personal property.

- **Pre-paid calling services – IP11004**

Ms. Christie Comanita explained that a 2005 amendment to the SSUTA was meant to retain the point-of-sale taxation of prepaid wireless products to encompass evolving prepaid products that allowed consumers to purchase more than just voice time. She said that at the time prepaid wireless service was typically sold in terms of minutes (e.g., 100 minutes for \$50, etc.) or dollars, but, in defining prepaid services the definition retained the broader concept of “predetermined units or dollars” as part of the amendment. She said the broader concept of “units” provided a desired level of flexibility that has continued to cover new and evolving ways in which prepaid service, primarily wireless, is being marketed and packaged to consumers, including new offers that are expressed in units of time other than minutes. She said offers have been advertised as “unlimited minutes” that expire over a prescribed unit of time such as weeks or months. She said questions have arisen in member states as to whether “unlimited” plans meet the SSUTA definition. She said that because the term “unit” is broader than “minutes” such term must be given a meaning broader than just “minutes” and so called “unlimited” plans are in fact limited in terms of other predetermined units of measure such as a month (and the customer is not entitled to further use of the service after that predetermined limitation has been met). She said that to the extent the plans include a “predetermined unit” limit even though it is longer than a minute the plans meet the definition of prepaid wireless calling service.

Ms. Comanita said SLAC was recommending a clarification to explain the intent of the term “predetermined units of dollars” to include examples of the measures and combinations of measures of units, including event driven that meet the criteria of prepaid wireless service for purposes of the telecommunications sourcing definitions in Section 315 and for the telecommunications definitions in the Library of Definitions.

Senator Cook asked if a change to a rule would require the state to change to a policy on pre-paid calling cards. Ms. Deborah Bierbaum said she thinks only one state would have to change. She also said there is a typographical error in the SSUTA. She said in one spot of the SSUTA it says “units of dollars” and in another part it says “units or dollars” and it should be “units of dollars”.

- **Exemption from Sales Tax – IP11005**

Jane Page explained that the SSUTA definition of “sales price” included taxes imposed on the seller, but some states have exemptions for specific taxes. She said the issue came up during the

Compliance Review and Interpretation Committee's (CRIC) state recertification review. She said CRIC did not want to act on the issue until it was addressed by the Governing Board. She said SLAC was proposing a change to the definition of sales price to allow states to exclude certain taxes. Delegate Doyle asked Ms. Page whether this change would allow a state whose local governments only have a lodging tax to exclude the lodging tax from sales price. Ms. Page said it could, but it would depend on how the statute is issued.

- **Taxes on Communication Services – IP11009**

Bruce Johnson reported that an amendment was proposed to the Agreement that would correlate with that of the Agreement with the Main Street Fairness Act. He said they considered what are considered taxes on communications services and what are excluded from taxes on communications services? He said communication taxes are any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each connection or line or measured by gross amounts charged for communications services, regardless of whether such tax, charge, or fee is imposed on the seller or purchaser of the service and regardless of the terminology used to describe the tax, charge, or fee. He said what are excluded from taxes on communications services includes a number of specifically excluded impositions such as net income taxes, equitably apportioned income taxes, rights of way fees, and generally applicable gross receipts, and modified gross receipts taxes.

- **Gift Cards, Vouchers and Layaway fees**

Mr. Tim Jennrich explained that SLAC was assigned the issue of evaluating electronic coupons and gift cards. He said the issues included third party consideration paid for the coupons, tax on the purchase of the coupon, tax when the coupon is used. President Kenley assigned this to the State and Local Advisory Council.

- **Sourcing of Digital Goods**

Ms. Page said sourcing of digital goods follows the general provisions of section 310A of the SSUTA. She said the concern is determining the location where the purchaser "receives" the digital product for purposes of sections 310A.1 and 2. She said that if the location of receipt cannot be determined, the seller is to source to an address found in its own records or obtained during the sale, or defaults to the seller's own location. Section 311B of the SSUTA defines "receive" or "receipt," with respect to sales of digital goods, as "Taking Possession or Making First Use of Digital Goods", whichever comes first. Ms. Page said the sourcing of digital goods involves an interplay between SSUTA Sections 309A ("...the provisions of Section 310 apply regardless of the characterization of the product as a digital good..."), 310 (General Sourcing Rules) and 311 (defining "receive" and "receipt" for purposes of Sec. 310). She said that in addition, Sec. 310.1 (Election of Origin-Based Sourcing) may be used by a state to source retail sales of digital goods. She said that a rule should be written to clarify how Sections 310, 310.1 and 311 apply in the sourcing of digital goods.

Mr. Richard Prem said when the sourcing rules were developed it was intended that digital products would be sourced according to those guidelines. He said that there is a hole in that

hierarchy requiring digital goods that needs to be addressed. In response to a question from Senator Cook Mr. Prem said the industry is worried about how non-SST states will source digital goods. He said they are concerned about multiple states trying to tax the same transaction. Mr. Prem said he would like the Streamline rules to apply in non-member states.

- **Audit Committee**

Mr. Bruce Christiansen, Audit Committee Chairman, said Streamline states needed better confidentiality agreements for the core team to do an effective job. He said they do not have the expertise on the committee to draft agreements and hopefully that would be taken into consideration by the Governing Board. He also said they had asked CRIC for interpretation of whether the 120-days can include the appeal period and that they have also been working on a single audit white paper. He said they are preparing a paper they discuss at length at the March 2012 Audit Committee meeting in Nashville.

- **Nominating Committee**

President Kenley reported that the Nominating Committee was submitting the following slate of officers for an annual term beginning January 1, 2012:

Officers (annual terms starting January 1, 2012):

President Russ Brubaker (Washington)
1st Vice President Wayne Harper (Utah)
2nd Vice President Diane Hardt (Wisconsin)
Secretary/Treasurer Richard Dobson (Kentucky)

Directors (two year term that starts January 1, 2012 and ends December 31, 2013):

Senator Deb Peters (South Dakota)
Michael Eschelbach (Michigan)
Jerry Johnson (Oklahoma)

Delegate Doyle moved the election of the slate of candidates. That motion was approved on a unanimous voice vote.

President Kenley reported that the Nominating Committee was submitting the following slate of candidates for the Nominating Committee for an annual term beginning January 1, 2012:

Nominating committee (annual terms starting January 1, 2012):

Richard Cram
Peter McVay
Paul Dennert
Sherry Hathaway
Luke Kenley
Wayne Harper
Jeff Wilson
Victoria Daniel
Phyllis Shambaugh

Delegate Doyle moved the election of the slate of candidates. That motion was approved on a unanimous voice vote.

Proposed Amendment to SSUTA for Discussion of Possible Action on Sales Tax:

- **Definition of Sales Price – AM11002A01**

Mr. Richard Dobson explained that this was a replacement to the SLAC amendment. He said this amendment would allow states to exclude certain taxes from sales price. Ms. Jane Page stated that there are many different types of taxes exist at the retail tax level and discussed how each was or was not included in the sales price definition. She said that several states would have to change their laws and said this requires 2-votes. She a state can choose those taxes to exclude from the definition. Mr. Dobson said it could be statute or regulation and because it will be noticed creates transparency for the business community. Mr. Dobson moved adoption of the amendment. That motion was approved unanimously on a roll call vote of full member states.

Proposed Rules for Discussion and Possible Action or Changes:

- **Clean-up of various administrative rules – RP11009**

Ms. Diane Hardt explained that this amendment changed the local government composition of SLAC and revised several rules to comport with practice. Mr. Fred Nicely said that BAC is supported the amendment except the deletion of the first sentence on page 7. President Kenley ruled that without objection that amendment was approved. Ms. Hardt moved the adoption on the amendment. That motion was approved on a roll call vote with 23 states voting yes and Ohio absent.

- **Sales Price – RP11008A01 (taxes included)**

Mr. Richard Dobson explained that this was the companion rule to the sales price SSUTA amendment. He said the rule elaborates on certain principals and gives examples. Mr. Dobson moved the adoption of the rule, with replacing of one word. That motion was approved unanimously on a roll call vote. Mr. Peterson said that like the SSUTA amendment, this rule would not become effective until the second vote.

- **Interpretive Rule – RP11005 (taxation of prepaid calling cards)**

Mr. Jerry Johnson explained that this rule clarifies that for purposes of the terms “prepaid calling service” and “prepaid wireless calling service,” the term “predetermined unit” includes but is not limited to units measured by dollars, events, time, or combinations thereof or any public comment and there were none. Mr. Jerry Johnson moved adoption of the rule. That motion was approved unanimously on a roll call vote.

New Business:

- **Cloud Computing Presentation**

Mr. Russ Brubaker introduced Mr. Mark Corber, Solutions Architect at Amazon Web services, Ms. Carolyn Iafrate Kranz of Iafrate Associates, Mr. Caleb Allen of the Washington Department of Revenue, Mr. Rich Prem of Amazon and Mr. Bob Heller to give presentations on the technology of cloud computing and the state tax implications.

- **Oklahoma local governments**

Mr. Scott Peterson said that when Oklahoma was admitted as a member, the Governing Board knew that Oklahoma law did not require state administration, but that it wasn't an issue in practice because every Oklahoma city contracted with the state. He said a year ago the city of Tulsa decided to contract with a private company to administer their sales tax. Mr. Peterson said that most of those who have evaluated the situation believe this action will take Oklahoma out-of-compliance with the Streamlined Sales Tax. He said Tulsa is in court with the state over a state law that required cities to contract with the state. He said if Tulsa is successful any business operating within Tulsa will be required to file a separate sales tax return for Tulsa as well as for the state of Oklahoma and other cities might make the same decision. Mr. Fred Nicely said the BAC wants Oklahoma to remain as a full member state, but this was an issue of efficiency. He said it was better for businesses in Oklahoma to have central administration. Senator Cook said it may not be a great burden for businesses in Oklahoma if one city required a separate tax return, but he said when Oklahoma became like Alabama it would be a huge burden. Senator Cook questioned whether the volunteer sellers collecting for Oklahoma had any idea how complicated it might become.

Ms. Deborah Beirbaum said there as a public hearing on October 4. President Kenley asked if the BAC would have a retailer attend and that he would see if Christopher Rants could attend and represent the Governing Board.

- **Contract approval with CCH**

Mr. Scott Peterson informed the Board that the certified service provider (CSP) Speedtax was acquired by CCH. He said the Board's rules require the Board's authorization to continue as a CSP. CCH has worked with the Certification Committee and the Certification Committee recommends that the Board approve the certification transfer from Speedtax to CCH. Delegate Doyle moved approval of the transfer. That motion was approved unanimously on a voice vote.

- **Discussion of the creation of a Local Government Advisory Council**

Mr. Michael Bailey said that with the change in the bylaws reducing the vote given to local governments on State and Local Advisory Council the locals governments would like the Governing Board to create a separate local government council. He said it would work with SLAC but would allow local governments to present one position on some issues. Mr. Russ Brubaker said this makes sense and allows local government to participate at a different level and might bring in new local government partners. Delegate Doyle said this is an excellent idea

and that in the past they have had difficulty communicating and he felt this would improve that. President Kenley assigned this to Russ Brubaker.

- **Spring Meeting Discussion**

Delegate John Doyle said the Governing Board had made a decision to have at least one yearly meeting in DC for lobbying purposes. He recommended continuing to have the spring meeting in DC for that purpose. President Kenley said the Governing Board needed to consider Delegate Doyle's idea and think about where they would like for the meeting to be held. He advised Delegate Doyle to talk to Russ Brubaker and he could form a committee.

- **Sten Wilson**

Mr. Sten Wilson said he appreciates the efforts of Streamlined. He said he and his wife have a sheep farm in New York and uses a CSP to handle his sales tax. He added that it is simple and free of charge. As a result, his farm is now able to calculate sales tax for every state in the US in 17-minutes. He thanked Amazon for supporting the MSFA and hopes their integrity would become contagious. He said as he travels and has discussions with small bus owners, it is clear to him that there's an overwhelming demand for Congress to act.

- **President Kenley's service**

Mr. Jerry Johnson expressed his appreciation to Senator Kenley for all his work to further the cause of the MSFA. He stated that Senator Kenley is the primary reason that the Governing Board has made the progress that has been made.

President Kenley adjourned the meeting at 11:28 AM Pacific.