

Streamlined Sales Tax Governing Board Meeting
December 19, 2013

Welcome and Roll Call of Member States

President Wayne Harper called the Governing Board meeting to order at 1:02 pm central. The roll of the states was called, 21 full member and 2 associate states were present by teleconference. West Virginia was absent.

Approval of October 29-30, 2013 Governing Board Meeting Minutes

President Harper requested a motion for approval of the October 29-30 Governing Board meeting minutes. Michael Eschelbach said he had just receive the lengthy minutes this morning. He asked if the approval of the minutes could be tabled to the May 2014 Governing Board meeting and President Harper agreed. The minutes will be reviewed at the next Governing Board meeting.

CRIC Interpretive Opinion, Take and Bake Pizza – Myles Vosberg, CRIC Chair

Chair Myles Vosberg said the CRIC had received an Interpretation opinion request from David Steines of the Wisconsin Department of Revenue and Mike Larson from CliftonLarsonAllen Company. The request was in regard to whether the Take-N-Bake Pizza product met the definition of prepared food. He reported that CRIC had held a meeting to discuss the interpretation request. The Take-N-Bake Pizza products are sold uncooked. The definition of prepared food includes two or more ingredients mixed or combined by the seller and sold as a single item. Based on that part of the definition, the pizza products appear to fall under the definition of prepared food.

However, there have been a number of states that have not been taxing the Take-N-Bake Pizza as prepared foods because it is not really in a “ready to eat” condition. The CRIC needs to give some direction to those who are selling these products. Chair Vosberg stated that the CRIC felt that the Take-N-Bake Pizza’s fall under the definition of a prepared food product. He reported that since CRIC had put out that interpretation opinion for the Governing Board to consider, they have had discussions with several of the states and some members of the business community involved in this issue. Some of the states and the business community would like to come up with a toggle and allow states to treat this differently than other prepared foods. Several who have been working on this would like to defer a decision to allow time to put together a possible toggle that would be added to the “prepared food” definition. If that amendment is accepted, then the opinion is a moot issue and states will be able to tax this product in the way that they have been previously. Richard Dobson asked if he understood it correctly that if a toggle is created for those who would want to exclude the Take-N-Bake Pizza from the prepared food definition, there would have to be a law change by those states. Chair Vosberg said some are of the opinion that states could do it other than with a law change. He agreed that those states that would want to exclude the Take-N-Bake Pizza or not ready to eat products from the definition would need to amend their definition in order to be able to do that. Mr. Dobson said just wanted to make sure every state understood what would need to happen. He asked how long it may take for this process to occur. Would you defer this ruling and as each state makes the adoption to choose this election it would resolve itself over time. Chair Vosberg said we are confident that the CRIC will have something ready very soon in time for discussion at the Governing Board meeting next May.

Richard Prem of the Business Advisory Council (BAC) said they want to determine how many states are in each bucket as it seemed to be the minority of the states that are taxing this. He said in trying to pass federal legislation, this type of issue is just fodder for the opposition and if there are states that want to continue taxing it, those states should have to make the change. Chair Vosberg said he had emailed all

member states and five had not responded. Eight or nine states indicated that they are treating the Take-N-Bake Pizza products as prepared food and six do not. Richard Dobson suggested tracking down the five states who have not responded. Mike Eschelbach indicated that he thought the language was fairly clear and if states want to take a different approach, those should be the states that would have to make the law or regulation change. Harry Fox said when we are creating this toggle we could allow any state to do it by rule and not just change the law. President Harper said he would like for Chair Vosberg to head up the workgroup to continue work on this issue. He recommended including Richard Dobson and Richard Prem in the discussions and Chair Vosberg agreed. Dan Noble said he was on the call yesterday and it was his understanding that the language was going to be inserted into the exclusion as it relates to the definition of prepared food. There was a lot of discussion and even the BAC stated they didn't think there would be a requirement that states change their statutes. It's just an explanation of how they can treat Take-N-Bake Pizza as food that is not ready to eat. Chair Vosberg said they had preliminary discussions on that but certainly need more input regarding the possible law change requirements. He agreed that based on yesterday's discussions, there may not be a need to change formal legislation. Craig Johnson said the business community will also need to review this to determine whether they are in agreement. The discussion at this point was that some states said they would definitely want to have it in their statutes.

CRIC Annual State Compliance Report - Myles Vosberg, CRIC Chair

Chair Vosberg said there was excellent participation from the states, the Business Advisory Council, Executive Director Craig Johnson and Pam Cook, Director of Research. He thanked everyone for their participation in this process. He explained that after the initial preparation of the state recertification report, there are a couple of comment periods for the states and general public. After the public comment periods, the Compliance Review and Interpretations Committee (CRIC) holds a series of meetings where they review each state individually to determine whether or not the state is out-of-compliance with the Agreement. He reported that in the results of this year's review, there were 17 states that the CRIC found not out-of-compliance. He reported that the CRIC did not take any action on Ohio because the Governing Board found Ohio to be not out-of-compliance so they could become a Full Member state effective January 1, 2014. Tennessee is an Associate member state and the question was whether Tennessee needed to meet the requirements contained in the Rule for Associate member states or if Tennessee was grandfathered in. CRIC did not take any action on Tennessee since the issue of Tennessee's compliance had been referred to the Executive Committee in 2011 and the issues remain the same. There are 5-states the CRIC recommended to be found out-of-compliance. Chair Vosberg made a motion for approval of the group of 17-states that are not out-of-compliance: Arkansas, Iowa, Kansas, Kentucky, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, Wisconsin and Wyoming.

Fred Nicely said all the states were fine with the BAC except one - Minnesota. He asked to remove Minnesota from the not out of compliance list for a separate vote. Richard Dobson moved that those 16-states would be excluding the vote involving the individual state that's voting. David Drovdal said he understood the Minnesota issue has to do with sausage prepared and he felt that is the same issue that the Governing Board had decided to table pending a workgroup review. The motion was amended to exclude Minnesota from the list and vote on them separately.

Craig Johnson said the motion is for the approval of 16-states, excluding Minnesota, to be found not out-of-compliance with the Agreement. If each state casts a yes vote, they are automatically abstaining from the vote on their own state's compliance. Roll was called, 21 full members voted yes, West Virginia was absent and the motion carried.

Fred Nicely said two years ago Minnesota was found out-of-compliance related to a prepared food issue. By not finding them out-of-compliance on this issue we have a garbled decision. It's important to realize that the issue is not exactly the same as the take-n-bake pizza issue. What is being worked on for the take-n-bake pizzas (i.e., ready to eat food products) is not going to necessarily address the Minnesota issue. He said if you want to incorporate Minnesota's issue with that workgroup, the BAC doesn't have a problem with it. Representative Drovdal said he thought it was quite similar. He felt the Governing Board should find Minnesota not out of compliance until this issue is reviewed. Fred Nicely said the reason it's different is the question on cold meats and seafood and whether those products are ready to eat. He said this is a different issue but it could definitely be brought into the workgroup that is heading up this issue. Chair Vosberg said the thoughts of the Committee when they discussed Minnesota was that this item has always been identified on Minnesota's Certified of Compliance and has always been disclosed since 2005 when we all became members. The issue wasn't raised until last year. The CRIC voted that Minnesota be found out-of-compliance last year. When we discussed it at the Governing Board meeting, however, Minnesota was not found out-of-compliance. He said the issue had not changed since previous years. He said the CRIC felt they would follow the guidance of the Governing Board last year and find Minnesota not out-of-compliance. Tim Jennrich (WA) said the Washington state perspective is consistent with Chair Vosberg's statement. Washington was one of the original CRIC members who recommended to find Minnesota out-of-compliance. After that the Governing Board took it up and made a decision to the contrary. He felt that perhaps it would not be a good idea to revisit that issue each year. Tom Atchley agreed and felt it wasn't right to rule on that again. Craig Johnson said Governing Board Rule 803.D.2.b states if an issue has previously been raised and was the subject of an unsuccessful challenge, such state need only respond that it was previously held in compliance on that same issue. CRIC and the Governing Board, however, must take into consideration any documentation that supports such state is not in compliance.

President Harper said he would like for Chair Vosberg and the workgroup to take up the Minnesota issue as well.

Michael Eschelbach moved that Minnesota be found not out-of-compliance. Indiana seconded the motion. The state roll was called, 20 states voted yes, West Virginia was absent, Minnesota abstained and the motion carried.

- **Georgia**

Chair Vosberg reported that Georgia has 3-issues where the Committee thought they were not in-compliance. In the past year the state of Georgia enacted a good faith provision with respect to exemption certificates which is not allowed if the certificates were received at the time of sale and were fully completed. Also Georgia does not accept the simplified electronic return from sellers other than model-1 sellers. This is the first year that states were required to accept the electronic returns from all filers and not those just registered through the Agreement. Georgia has had some sales tax holiday issues the past 2-years where they didn't use the definitions required in the Agreement. That's no longer an issue since the holidays are done, unless the Georgia legislature would decide to extend those sales tax holidays. The third compliance issue is regarding the education local option tax for energy. The exemption applies to all local taxes except the school local sales tax. Chair Vosberg motioned that Georgia be found out-of-compliance on these issues. Tim Jennrich seconded the motion.

Amy Oneacre (GA) said Chair Vosberg had summed it up well. The idea is that they will have some legislative changes to correct the issues. Georgia recognizes the good faith exemption certificate is an

issue. Sales tax holidays expired this year so that is no longer an issue. Georgia does not accept an SER from anyone other than a model 1 seller at this time. She said that restriction is really a taxpayer friendly restriction and the schema on the SER will not allow the return to properly calculate the vendor compensation that Georgia pays. Georgia has a fairly liberal compensation policy where the vendor receives 3% on the first \$X of tax from each location and .5% thereafter. Georgia has outlined that the vendor may file an SER but would be shorted on vendor compensation. On the energy exemption issue, that is also a taxpayer friendly exemption relating to the local option sales tax. They will be working on that internally, however the department of revenue cannot fix this issue. There have been both internal and legislation discussions. Ms. Oneacre noted that Georgia's membership is very important to them and they will be making all of the appropriate recommendations.

The motion was that Georgia be found out of compliance on these issues. The member state roll was called, 20 states voted yes, West Virginia was absent, Georgia abstained and the motion carried.

- **Indiana**

Chair Vosberg said CRIC recommended that Indiana be found out-of-compliance on issues 1, 2, 3 and 4 of the state recertification report. He reported that a federal excise tax that is imposed on the seller but is passed on to retailer is exempt under Indiana statutes and under the agreement the federal excise taxes that are imposed on the seller are required to be included in the base. As a carryover from last year, Indiana does not follow the rounding rule that allows the seller to calculate the tax on a line item by line item basis on the invoice. On the durable medical equipment (DME) Indiana has an exemption which carves out blood glucose meters which fall within the definition of DME. Under the Agreement you have to exempt all or tax all and it creates a compliance issue. He moved that Indiana be found out-of-compliance on these issues. Senator Deb Peters seconded the motion. Senator Luke Kenley (IN) said on the blood glucose issue, he is filing a bill to correct that and hopefully will be able to get it passed. Larry Molnar said on issue 1, it's true that Indiana does offer the exemption with respect to the federal excise tax. It's on special fuel and certain vehicles. He said Indiana is looking into that issue and the department of revenue will work with the general assembly. On the rounding rule Indiana continues to have concerns when on a per item basis where each item is 4 cents or less, no sales tax would be collected. Indiana continues to argue that would be an avoidance of sales or use tax. He said they would look to Streamlined for guidance.

Craig Johnson inquired about the SER carryover issue. Chair Vosberg said that's the same issue that Georgia had not being able to accept the SER from all sellers as opposed to just the model 1 sellers. Larry Molnar said with respect to the SER, Indiana had offered the explanation that they are in the midst of changing their system and had gotten very close to satisfying this with model 4 sellers. Then they had to implement a new system. With respect to this issue, Indiana was not quite ready for the model 4s. Chair Vosberg said there is a statement in the report regarding Indiana's efforts to try to correct this.

Craig Johnson repeated the motion that Indiana be found out-of-compliance on issues 1, 2, 3, and 4 in the November 25, 2013 compliance review report. Roll was called, 20 states voted yes, West Virginia was absent, Indiana abstained and the motion carried.

- **Michigan**

Chair Vosberg said there is only one issue for Michigan and that is in regards to direct mail. Michigan has not adopted all the sourcing rules and definitions with respect to direct mail.

Michael Eschelbach (MI) said Michigan agrees with the CRIC finding. He reported that they have drafted the legislation to correct this issue.

Craig Johnson said the motion is that Michigan be found out-of-compliance on issue 1 as indicated in the CRIC report dated November 25, 2013 and a yes vote indicates you agree Michigan is out-of-compliance. Roll was called, 20 states voted yes, West Virginia was absent, Michigan abstained and the motion passed.

- **Nevada**

Chair Vosberg said there were 4 issues raised with respect to Nevada during the CRIC review. Three of the four issues were resolved and the only issue remaining relates to direct mail. This is issue 4 in the November 25, 2013 CRIC report and is a little different than Michigan's issue. The issue with Nevada is that they require an in-state business to collect tax on direct mail even if exemption documentation has been provided by the purchaser. Nevada responded during the CRIC meeting that they are working on this issue and have drafted guidelines for tax payers and administer the statute as provided in the SSUTA. However those guidelines had not been finalized by the time CRIC met. Chair Vosberg motioned that Nevada be found out-of-compliance on issue 4. Senator Deb Peters seconded the motion.

Paulina Oliver (NV) agreed there was a problem with the statute as it is currently drafted. The problem is if a certificate of direct mail is received, Nevada would still require a taxpayer that has nexus to collect the tax for the direct mail that stays in Nevada. Ms. Oliver also indicated that the legislature has given them the authority that allows them to give advice as to how the statutes are administered. She reported that Nevada has developed a technical bulletin which has now been approved and is already published. It says that an exemption certificate will apply to the entire transaction. Ms. Oliver stated that they believe this has taken care of the issue, but will try to get a statutory fix in 2015.

Chair Vosberg indicated that it sounds like this is basically a technical correction and that Nevada is now administering the statute consistent with the requirements contained in the Agreement. He asked if the BAC wanted to comment on this as it sounded like Nevada is in-compliance.

Fred Nicely said his concern was whether they follow the default sourcing if the exemption certificate is not provided and Ms. Oliver said they do. Mr. Nicely said they would like to see Nevada's law change, however their legislature does not meet for another 15 months. The BAC would like to continue to work with Nevada. Tim Jennrich asked if it would be acceptable to say this issue is deferred.

Warren Townsend said he was not speaking for the business community, but WalMart would be supportive of Nevada since they are administering it consistent with the SSUTA. He hoped the Governing Board would find Nevada in-compliance. Victoria Daniels agreed with Mr. Townsend and would be in favor of not finding them out-of-compliance.

Craig Johnson repeated the motion which is that Nevada be found out-of-compliance with issue 4. A yes vote means Nevada is out of compliance. There were 20 no votes, West Virginia absent, Nevada abstained and the motion failed. Based on rule 803.3 member states are presumed to be in compliance with the SSUTA and since the motion to find them out of compliance failed, Nevada is presumed to be in compliance.

- **Rhode Island**

Chair Vosberg said there were 2 issues raised with Rhode Island, but one of them had been resolved. Therefore the only issue that remained related to a cap or threshold that Rhode Island has on clothing. CRIC recommended that Rhode Island be found out-of-compliance because they have a cap on the sale of clothing for the first \$250 and any amount above that is taxable. That is not allowed under the SSUTA. Chair Vosberg moved that Rhode Island be found out-of-compliance on the cap and threshold issue noted in the report. Senator Deb Peters seconded the motion.

Peter McVay (RI) gave background on the issue in relation to section 323 of the SSUTA. He reported that legislation was passed in the FY-2013 budget making only clothing purchases of less than \$250 exempt. Prior to October 2012 clothing was fully exempt. The language in section 323(A) states that no member state can have caps or thresholds unless the state assumes the administrative responsibility and it places no additional burden on the retailer. Mr. McVay indicated that the state feels no additional burden is put on the retailer because there was no opposition by the business community when the legislation was enacted, during the hearing or when the rules were promulgated. He said Rhode Island feels that they should be in-compliance with the SSUTA.

Chair Vosberg said that CRIC had discussed these issues regarding no additional burden on the retailers. The Committee felt that it is an additional burden if they have to program their systems for the cap.

Peter McVay responded that there were many national retailers operating in neighboring states that have thresholds.

Fred Nicely said the BAC is concerned that Rhode Island is not in-compliance with the Agreement on this issue and it creates a burden on the retailers. The Agreement does have limitations on when the states can use caps and thresholds. He said this will go away when the Marketplace Fairness Act (MFA) Bill passes. He said Rhode Island should be found out-of-compliance, however no one is suggesting that Rhode Island lose their full membership status.

Craig Johnson said the motion is that Rhode Island be found out-of-compliance with the Agreement on issue 1 of the CRIC report relating to caps and thresholds. Roll was called, 19 states voted yes, two states were absent, Rhode Island abstained and the motion carried.

President Harper expressed his appreciation for the work of the Compliance Review and Interpretations Committee.

Reports of Committees

• Executive Committee – Wayne Harper, President

President Harper reported on last week's Executive Committee meeting discussion regarding federal legislation. There have been many recent meetings on Capitol Hill. A group of 24-legislators had visited the Capitol and met with 70-members of the House. He said they had gotten over major hurdles including explaining that this is not a new tax. Most responded that they are waiting for Chairman Goodlatte to prepare a House bill for consideration.

President Harper said they also had a number of meetings with Judiciary Committee members and that they have been working with RILA on developing specific concepts, as opposed to specific bill language, for the House version of the Bill. President Harper stated that Streamlined supports the Senate sponsors and will continue to assist them in their efforts. The Senate sponsors would like the House to move forward with the MFA. Streamlined will help however we can.

President Harper also indicated that a number of legislators were in DC in early December and visited about 225 Congressional offices. Most believe something needs to be done and they just want to make sure it's done right.

- **Finance Committee – Victoria Daniels, Chair**

Victoria Daniels, Chair said the Committee had reviewed the income statement for the first quarter of FY-2014. The report showed that member state payments were about \$91,000 less than what was budgeted. This was due to member payments being received after September 30 when the first quarter ended. All of those payments have now been received.

There was a negative amount reported related to investment income. She reported that Craig Johnson had determined that the line item reflects the bank fees which more than offset the interest we earn on these accounts. The Finance Committee discussed that the bank fees should be a separate line item rather than being used to offset Investment Income.

With respect to the expenses, Chair Daniels reported that the GB has spent about 19% of the budgeted expenses for the year during the first quarter.

Craig Johnson said regarding the bank fees, the account was previously with Wachovia Securities and acquired by Wells Fargo Bank. Wells Fargo has not been able to satisfy the reason behind the bank fees and he is looking into changing the type of account we have in order to reduce these fees.

No questions were asked of Chair Daniels.

Craig Johnson reported that he had received the independent auditors report for FY-2013. Their opinion was that the financial statements prepared and provided at the October Governing Board meeting properly reflect the financial position of the Governing Board. All of the Executive Committee members received an electronic version of the report.

Old Business

None

New Business

None

Adjournment

With no further business, President Harper adjourned the meeting at 2:18 pm central.