

Governing Board Meeting Minutes

December 19, 2014, 10:00 AM Central

- **Welcome and Roll Call of Member States**

President Diane Hardt called the teleconference meeting to order at 10:02 am central. The roll of the member states was called with 19-present. Absent were Rhode Island, Utah, Vermont, Tennessee and North Dakota.

- **Approval of October 7-8, 2014 Governing Board Meeting Minutes – MM14002**

President Hardt asked if there were changes or corrections to the October 7-8, 2014 Governing Board Meeting Minutes. There were no recommended changes. Richard Dobson motioned the approval of the October 7-8, 2014 Governing Board Meeting Minutes. The roll of the states was called, 19-voted yes and the motion passed. Absent were Rhode Island, Utah, Vermont, Tennessee and North Dakota.

- **Status of Federal Legislation**

Randi Reid reported that President Diane Hardt, Craig Johnson and Richard Dobson traveled to Washington, DC in November. They met with House Republicans and Senators about getting the Marketplace Fairness Act (MFA) passed this year and the meetings were quite productive. The House adjourned on December 11 and the Senate adjourned on December 16. There will be a continued focus to get the MFA passed in the 2015 Congress. Congressman Jason Chaffetz has been working on a bill with significant legislative language changes. Speaker John Boehner told them the MFA would not be included in the House Appropriations bill this year. House Judiciary Committee Chairman Bob Goodlatte continues with the hybrid origin sourcing, but it has not been made public at this time. The Governing Board plans to meet with Chairman Goodlatte's policy staff, Speaker Boehner, Congressman Jason Chaffetz and the Senate sponsor's staff early next year to discuss how to get eFairness legislation passed in 2015.

In the Senate, Randi Reid reported that Senators Enzi, Durbin, Alexander and Heitkamp continue to work on the enactment of the MFA Bill. Majority Leader Reid has committed to bring this to the Senate floor in 2015. She said the Governing Board remains directly involved in offering technical guidance to the House and Senate leaders. The Governing Board is committed to ensure that whatever passes would work from the state's perspectives.

President Hardt reported that NCSL and the Legislative members have been very active on this bill. Randi Reid said that NCSL had two fly-ins to the Hill, along with Senator Deb Peters and Senator Wayne Harper. John Doyle asked what the chances are that Speaker Boehner could be persuaded to run this bill fairly early in the new Congress. Ms. Reid explained that she does not speculate on what any member of Congress will do in 2015. His team has not committed to a specific timeline to e-Fairness, but the commitment has been made that they will continue to work with the Governing Board and other stakeholders to move the MFA forward. Randi Reid said we will be working with Chairman Goodlatte and also Senator Orrin Hatch who will be the new Finance Committee Chair.

- **CRIC Annual State Compliance Report – CI14020 - Myles Vosberg, CRIC Chair**

Chair Vosberg said this year's compliance review for the states went really well and he explained the process. August 1 was the deadline to submit the taxability matrix with a letter as to whether the states are in or out-of-compliance with the Agreement. Pam Cook reviews those documents and prepares an initial report for Craig's review and to post to the website. There is a 30-day comment period where all of the states may respond regarding anything in the report. Then there's a follow-up 10-day comment period for people to respond to comments that have been made. Next there are several CRIC conference calls held to review the issues identified in the initial report for each of the states and take any additional public comments about a particular state's compliance. The Compliance Review and Interpretations Committee votes as to whether the states are out-of-compliance. A report is then prepared and sent to the Governing Board President by November 30. His report today was based on that report. He thanked everyone involved and in particular, Pam Cook as she provides an excellent guideline. He also reported that in 2014, all of the votes within the CRIC were unanimous.

Chair Vosberg made a motion to document that there are 20-states that are not out of compliance with the Agreement this year. He said the states do not vote on their own compliance. There were no discussions or comments from the Governing Board or the public. President Hardt asked if anyone had objections to voting on all 20-states in one vote and no one commented. Chair Vosberg reported that the states that are not out of compliance are Arkansas, Iowa, Kansas, Kentucky, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. The roll of the full member states was called, 18-states voted yes, 1-abstained on Arkansas, Iowa, Kansas, Kentucky, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, South Dakota, Washington, West Virginia, Wisconsin, and Wyoming. The vote was 19-states yes on North Dakota, Tennessee, Utah and Vermont and the motion passed. Absent was North Dakota, Rhode Island, Tennessee, Utah and Vermont.

Georgia

Chair Vosberg reported that Georgia has the same 3-issues as last year, local tax base, exemption administration and SER issues. Chair Vosberg made a motion that Georgia be found out-of-compliance on the local tax base, exemption administration and SER issues. Amy Oneacre (GA) said she had no comments and there were no other comments from the state of Georgia or the public. The roll of the full member states was called, 18-states voted yes, Georgia abstained and the motion passed. Absent was North Dakota, Rhode Island, Utah and Vermont.

Indiana

Chair Vosberg reported that Indiana has 2-compliance issues which are the same as last year, Federal taxes being excluded from sales price and not accepting the SER from all sellers. Senator Kenley asked Larry Molnar to explain Indiana's situation. Mr. Molnar said on the excise

tax, this would result in a tax increase in Indiana to correct it. He reported that Indiana would like to propose an amendment to the Streamlined Agreement to allow states a toggle with respect to the federal excise taxes. He said that both the department and Senator Kenley will work on proposing an amendment to the SSUTA for this issue. With respect to accepting SERs from Model 4 Sellers, Indiana is implementing a new system and has completed testing and one challenge that remains is the Model 4 SER. They plan to put the resources in place to get that issue resolved this year. President Hardt asked Indiana to plan to have their amendment ready for the May meeting and they agreed. There were no comments from the member states or the public. Craig Johnson said the motion was to find Indiana out-of-compliance related to the SER and excise tax that was to be included in the sales tax base. The roll of the full member states was called, 18 voted yes, Indiana abstained and the motion passed. Absent were North Dakota, Utah, Rhode Island and Vermont.

Michigan

Chair Vosberg reported that Michigan has not adopted all of the definitions for direct mail for sourcing purposes. This same issue was raised last year and Michigan was found out of compliance at that time on this issue. He motioned that the Governing Board find Michigan out-of-compliance on the sourcing rules and definitions for advertising and promotional direct mail and other direct mail. Mike Eschelbach said that Michigan had drafted language to make the correction and their Legislature did not act on it. The Legislative session expired yesterday, so it will have to be reintroduced the first of the year. There were no comments from the Governing Board members or the public. The roll of the full member states was called, 18-voted yes, Michigan abstained and the motion passed. Absent were North Dakota, Rhode Island, Utah and Vermont.

Rhode Island

Chair Vosberg said that the one compliance issue is a carryover from last year and is in regard to the threshold on clothing where the first \$250 of the sales price for an article of clothing is exempt from tax. Any amount above \$250.00 is taxable. That is a violation of Section 323 of the Agreement. Rhode Island has a statute in their law that provides if Federal Legislation is passed, the threshold would go away and they would be in-compliance with the Agreement. Chair Vosberg motioned that Rhode Island be found out-of-compliance with Section 323 of the Agreement. Rhode Island made no comments. Senator Peters said she had spoken to several Legislators in Rhode Island and does not believe they are going to be able to make the changes. The roll of the member states was called, 18-voted yes, Rhode Island was absent and the motion passed. Absent were North Dakota, Rhode Island, Utah and Vermont.

Craig Johnson said he had reviewed the rule on finding states out-of-compliance at the October meeting. It was determined that he would send a letter to those states to let them know they are out-of compliance and to ask what the Governing Board can do to help bring them back into compliance. Last year there were some states who had issues that they were able to resolve. President Hardt said it is up to the Executive Committee to determine what action should be taken and they would make a recommendation to the Governing Board. The Governing Board would then vote on any potential sanctions.

- **Review and Approval of Schema Changes for New Central Registration System**

Craig Johnson reported that the schema for the changes to the new Central Registration System have been laid out and needed to be approved by the Governing Board. The Registration System team has identified the necessary schema changes. Those changes are required to go through TIGRS for review and approval and they were approved by TIGRS on 12/11/14. All of the Certification Committee members of the Governing Board have been provided the schema changes and on the TIGRS call, 17 of 24 member states were present and they all voted to approve the schema. David Thompson followed up with additional member states and the end result is that 20 of the 24 states approved the schema changes and the remaining 4 have not voted for or against the schema changes. There were also 5 of the 7 CSP's present and they all voted to approve the schema set and the schema changes as well. The states are expected to have these changes in place by July 1, 2015. Until the Governing Board votes and formally approves the schema changes the states are not going to make the changes, not knowing whether the Governing Board would approve or not. Mr. Johnson said now we are at the point of the formal Governing Board approval. He said keep in mind that the states will need to have these ready for implementation July 1, 2015 so it is important that we get them approved now so states can get the necessary IT staff involved and working on the changes. David Thompson said the TIGRS call went well and there were a couple of questions regarding the layout and those questions were answered. Craig Johnson said many of the states are familiar with the federal MEF schema and several of the changes are being made to make SSTs schema set consistent with the MEF schema set. President Hardt asked if it could be ensured that all of the states are aware that they have an action to take. Craig Johnson said once the Governing Board has approved the schema, all of the Certification Committee members are notified to ensure that a response is received from every one of them. If a state is not ready by July 1, 2015, there is a work around where if the state does not have the schema programming changes completed, states would be provided a monthly extract showing new registrations and changed registrations that those states would have to manually input. He said that would not impact the states that make the schema changes by July 1, 2015. David Thompson said he would consider the changes not to be really significant. The biggest change was adding a few new data fields to the schema. It will be up to the states as to whether they use the data that is coming in or not. Craig Johnson said the motion is to approve the schema set that TIGRS approved on 12/11 and the changes will be in place by July 1 2015. The schema set will be added to the Implementation Guide once passed. Dan Noble asked if there would be an opportunity for the states to work with one of the CSP's to ensure that nothing is missed. David Thompson said the changes are only on the registration schemas. Mr. Johnson said there would be testing and the CSP's will be involved. There was no further discussion. The roll of

the states was called, 19-voted yes and the motion passed. Absent was North Dakota, Rhode Island, Utah, Vermont and Tennessee.

- **Bulk Registration Appendix C Amendment–Certification Committee Chair – RP14009**

Craig Johnson said a few years ago the bulk registration idea and concept was discussed. At that time, the CSPs were interested in developing a bulk registration process so they and the SSTGB staff would not have to manually enter the information relating to allowance indicators, etc. It would also allow a CSP to register a new seller in the Central Registration System electronically rather than through a duplicative manual entry process. Currently some of the CSPs are using bulk registration voluntarily and some are not. One of the changes that is being made with respect to the new registration system is that a seller will not be allowed to register immediately as a Model 1 seller or seller using a CSP. Instead, the seller would be allowed to indicate which CSP or CAS they anticipate using on their registration form. Based on that information, the SSTGB Registration System would be set-up to inform the seller that we would be sending that CSP their contact information. After working out the contract details with the seller, the CSP will submit a bulk registration to indicate the CSP contract date, first filing period and the allowance indicators for each of the states. In order for this process to work, the CSP's would be required to submit the necessary information via the bulk registration process. Otherwise, the CSP would need to continue to manually complete and submit a form to David Thompson that provides that information. In turn, David would need to manually enter the information in the system. As the volume increases, this could require a significant part of David's time. We currently encounter situations where a seller comes in, chooses to be a Model 1 Seller, but the seller never contacts the CSP. In the meantime, the states see that the seller is registered as a Model 1 seller and expect to receive a return every month. When the return doesn't come in, the state starts contacting the CSP about the nonfiling of returns for that seller, etc. This change would help eliminate that issue. With respect to the bulk registration process, it is being recommended that any new CSP that comes on board would have to complete the bulk registration by the time they are certified. The existing CSP's would generally be required to have it completed by July 1, 2015. We look at that as a cut-off since when federal legislation is passed, we anticipate there will be a significant increase in sellers using CSPs and it will not be possible for David Thompson to have to manually enter all of this information. It could take 4 or 5 David's to be able to keep up with the initial rush and ongoing changes.

- In an effort to implement this new requirement smoothly, Craig Johnson suggested that the following timeline be followed:

New CAS Providers or CSPs

- All new CAS Providers and CSPs must implement bulk registrations prior to certification. A new CAS Provider or CSP is an applicant that begins the certification process after December 19, 2014.

Existing CAS Providers or CSPs

- All existing CAS Providers and CSPs must implement bulk registrations effective July 1, 2015 if the CAS Provider or CSP has added a combined total of 10 or more new model 1 or model 2 accounts after January 1, 2015, but prior to July 1, 2015. If the existing CAS Provider or CSP has not added 10 or more new model 1 or model 2 accounts prior to July 1, 2015, the existing CAS Provider or CSP has until the first day of the month following the month in which the 10th new model 1 or model 2 account is added to implement bulk registrations. Regardless of the number of new accounts added, all existing CAS Providers and CSPs must implement bulk registrations no later than 90 days after federal legislation providing states remote seller collection authority is passed.

Certification Committee Chair, Tim Bennett said this does not make a change to anything that a state is doing on the state side. Craig Johnson asked if the CSP's on the call had comments. David Campbell thanked the Certification Committee and Governing Board for making this change to the system and supports it. Tim Bennett made a motion on behalf of the state of Kentucky, to adopt the proposed changes to Appendix C and for those changes to be effective for all new and existing CSP candidates as Craig described.

Craig Johnson said the motion is to add the bulk registration required to the minimum requirement for Certified Service Providers with the implementation date as he described. The roll of the full member states was called, 19 voted yes and the motion passed. Absent were Utah, Vermont, North Dakota and Rhode Island.

• **Definition of "Volunteer Seller" – MC14012 - Craig Johnson**

Craig Johnson explained that this issue relates to the definition of "volunteer seller" contained in Section D.2. (b)(2) the CSP contract. A change to that definition is being suggested to address a scenario that many may have not have thought about previously. Under the current CSP contract, a seller that meets the criteria contained in Section D.2.(b)(2)a. through e. of the existing CSP contract (i.e., in the 12-month period immediately preceding the date of registration, the seller (a) had no fixed place of business in the state for more than 30-days, (b) had less than \$50,000 of property in the state, (c) had less than \$50,000 of payroll in the state, (d) had less than 25% of its total property or total payroll in the state, and (e) was not collecting tax in the state as a condition to qualify as a supplier of goods or services to the state itself). As a "volunteer seller," the state is required to pay the CSP the compensation provided under the CSP contract for sales by these sellers into their state. The specific question that has come up is whether or not a seller that meets all of the criteria listed above, but is required by some other statute in that state to agree to collect the sales tax on the sales it ships into that state, is a "volunteer seller." Some people believe these sellers fall within the definition of "volunteer seller" while others did not. In an effort to eliminate this issue in the future, a proposed change

to the definition of “volunteer seller” being used in the CSP contract has been prepared to specifically exclude these types of sellers from the definition of “volunteer seller” that would be effective with the CSP contract beginning January 1, 2015. The definition of “volunteer seller” contained in Section D.2. (b) of the CSP contract is being proposed to be changed to read as follows (changes highlighted in yellow):

“(b) Volunteer Seller in a Member State, Contingent Member State or Associate Member State means a Seller that has registered pursuant to Article IV of SSUTA through the Central Registration System and:

(1) For Sellers who registered with the Member State, Contingent Member State or Associate Member State on or before November 12, 2002, that did not have a legal requirement to register and in fact did not have a requirement to register in the Member State, Contingent Member State or Associate Member State at the time of registration, regardless of any previous registration the Seller may have made in the Member State, Contingent Member State or Associate Member State; or

(2) The Seller meets all of the following criteria during the twelve (12) month period immediately preceding the date of registration with the Member State, Contingent Member State or Associate Member State:

- a. no fixed place of business for more than thirty (30) days in the Member State, Contingent Member State or Associate Member State;
- b. less than \$50,000 of Property, as defined below, in the Member State, Contingent Member State or Associate Member State;
- c. less than \$50,000 of Payroll, as defined below, in the Member State, Contingent Member State or Associate Member State;
- d. less than twenty-five percent (25%) of its total Property or total Payroll, as defined below, in the Member State, Contingent Member State or Associate Member State; and
- e. was not collecting sales or use tax in the Member State, Contingent Member State or Associate Member State as a condition for the seller or an affiliate of the seller to qualify as a supplier of goods or services to the Member State, Contingent Member State or Associate Member State; and
- f. was not required to register and pay or collect sales or use tax in the Member State, Contingent Member State or Associate Member State as a statutory requirement for the seller or an affiliate of the seller to be able to sell, ship or deliver a particular type of product into the Member State, Contingent Member State or Associate Member State.

Notwithstanding subsection D.2.(b)(2) above, any Seller that registered in a Member State, Contingent Member State or Associate Member State in the three years prior to the effective date of such State’s membership, is not considered a Volunteer Seller for that Member State, Contingent Member State or Associate Member State, if the Seller

had a legal requirement to register as a result of an administrative or judicial action in the state occurring prior to the date of the Seller's registration that was specific to that Seller. A Member State, Contingent Member State or Associate Member State that questions whether or not a seller is a volunteer shall provide written notice of such question to the Contractor. The Contractor shall have thirty (30) days after receiving such notice to respond in writing to the State. If the State and Contractor do not agree whether the seller is a volunteer within sixty (60) days of the State's notice either the State or the Contractor may submit a written request for a determination by the Executive Committee to the Executive Director. The Executive Committee's determination is final and binding upon the State and Contractor; or

(3) Any seller who meets the criteria of subsection D.2.(b)(2) and who becomes legally obligated to register in a Member State, Contingent Member State or Associate Member State solely because of the enactment of federal legislation.”

Craig Johnson said the motion should be to revise the definition in the CSP contract that was approved at the October Governing Board Meeting, effective January 1, 2015 going forward. Richard Dobson made a motion to revise the definition of the “volunteer seller” that was voted on at the October Governing Board Meeting, based on the language that has been proposed and just discussed and that change would be effective January 1, 2015.

Fred Nicely asked if the CSP's had agreed to this language. Mr. Johnson said the reason for it was explained to the CSP's. The states are already requiring these sellers to collect their sales tax in this situation and do not believe it appropriate to be required to now have to start paying them CSP compensation. The feedback received from the CSP's is that ideally they would not like to have the states limit the sellers they receive compensation on, but they understand where the states are coming from on this. This provision is similar to another provision already contained in paragraph (e) of the CSP contract that also excludes some sellers from the definition of “volunteer seller” in certain cases.

Mr. Nicely said when this was originally put together his understanding was that it was to try to have as many sellers as possible qualify as “volunteers” and allow the CSPs to get compensation. He asked if it was something that would vary state by state. Mr. Johnson said it is state-by-state as there must be a statutory requirement by the state that requires the seller to collect the sales tax. He said we recognize there are some states that may require the sellers to register and other states who would not require it. There is also nothing in the CSP contract or the Agreement that would prohibit the states from providing compensation on these transactions if they so choose.

Scott Peterson of Avalara thanked Craig Johnson and the Governing Board for giving everyone the opportunity to review a couple of different versions of this language. In response to Fred Nicely's question, he said that the CSP's are not really in favor of this as it reduces the size of the market for the CSP's. Some of the earlier versions were even more subjective than this. This is going to be a state-by-state provision. The CSPs are now going to have to increase the

amount of questioning of potential customers to see whether or not they are volunteers with this particular contract. Just because you have the right to regulate interstate commerce doesn't mean the seller is a volunteer. No state forces them to sell in their state.

Fred Nicely said in follow-up to Mr. Peterson's comments regarding the statutory requirement, some states are trying to require sellers to collect their tax to the fullest extent possible under the U.S. constitution. President Hardt said she does not believe that is the intent of this situation or the amendment. She said that hopefully this is a very short term situation. She did not feel that the states are planning to abuse this amendment. Craig Johnson said this change is focused primarily on particular products. There is already a requirement to collect the tax if you want to ship those certain types of products into a state and that is what this is intended to cover. There may be some other products at a future date that some states may impose the same type of requirement on. He said when Federal Legislation passes, we are going to have to look again at the definition of "volunteer seller" and the definition of "remote seller" used in the federal legislation. He agreed with Scott Peterson regarding the sellers that have fallen into the definition of "volunteer seller" under the CSP contract and the hope to keep that as broad as possible, but in this particular case, there is already a legal requirement in some states that some of these sellers have to collect the tax if they are going to sell into certain states.

Fred said it did not seem clear from this language as to the specific type of product and it should be specifically stated. Craig Johnson said each state's laws would identify the specific product(s) to which this applies, but that could change over time. Craig again stressed that ideally this will be a short term contract and the contract will be revisited when Federal Legislation passes.

Fred Nicely said this is related to the delivery of beer and wine in a state and that it is not known for sure as to whether or not those laws are even constitutional. It would help to specify that is what this is applied to. It could be specified more broadly by being fairly general by just stating beer or wine.

President Hardt said she appreciated all of the comments and the Governing Board should move forward on the vote. The roll of the states was called, 19 voted yes and the motion carried. Absent were North Dakota, Rhode Island, Utah, Vermont, and Tennessee. President Hardt said the revised contract would be signed before January 1 and we will continue to work on the contract with the Federal Legislation.

- **Reports of Committees**

- Executive Committee – Diane Hardt, President

President Hardt said the Executive Committee had met a week ago and they discussed the definition of "volunteer sellers" and also Craig Johnson's contract was extended through 2015. Craig Johnson said in October the Governing Board Meeting voted to certify five of the six CSP's. He said at the December 12 Executive Committee meeting they voted to certify the sixth CSP as well.

- Finance Committee – Craig Johnson

In Chair Daniel's absence, Craig Johnson said the external audit report from Watkins-Meegan had been received and the Fourth Quarter Financials have been approved. He has received the FY2015 First Quarter Financial Report and the Finance Committee had not yet met to discuss it. He said more will be reported on that after the Finance Committee meets in early January.

- **Old Business** – None

Craig Johnson reported that the spring Governing Board Meeting will be held on May 11-13, 2015 in South Burlington, Vermont. The annual fall meeting will be held on September 15-17, 2015 in Louisville, Kentucky. He said the final stages of the contract are being worked through for execution.

- **New Business** - None

President Hardt thanked everyone as well as Craig Johnson who has been working hard on behalf of the Governing Board.

- **Adjournment**

With no further business, President Hardt adjourned the meeting at 11:34 am central.