

Governing Board Meeting Minutes

December 18, 2015, 2:00 pm central
Teleconference Meeting

1. Welcome and Roll Call of Member States

President Deb Peters called the Governing Board Meeting to order by teleconference at 2:02 pm central. The roll of the states was called, present were 20-full member states and 1-Associate member state. North Dakota and Utah were absent. Utah joined the call immediately after the initial roll call.

2. Approval of September 16-17, 2015 Governing Board Meeting Minutes

President Peters asked if there were any recommended changes to the minutes and there were no comments. Tim Jennrich motioned the approval of the minutes. The roll of the member states was called, 21-voted yes and the motion passed.

3. Status of Federal e-Fairness Legislation – Craig Johnson

President Peters asked Craig Johnson to provide the report in Randi Reid's absence. Mr. Johnson reported that the federal e-fairness legislation, commonly known as the Marketplace Fairness Act, continues to be considered as an important policy issue to be addressed, but it was not included in the omnibus appropriations bill this year and will continue to be addressed in 2016. The congressional priorities this past fall were focused on macro policies affecting the country, such as the Bipartisan Budget Act of 2015, the reauthorization of the surface transportation programs, and the Iran nuclear agreement. As anticipated earlier this year, Congress is completing the annual appropriations process through an omnibus appropriations bill this week as well as a tax extenders bill. Unfortunately, e-fairness is not included in the end-of-the-year legislative packages. Fortunately, there are strong House and Senate champions of e-fairness that remain committed and focused on finding a solution. These sponsors, as well as many others agree this issue needs to be addressed. The policy issue continues to evolve and our supporters are working towards final passage.

House Update

As we have discussed throughout this year, in January, House Judiciary Committee Chairman Bob Goodlatte released a draft bill called the Online Sales Simplification Act. It outlines his desire for an origin sourcing model and the use of a central clearing house. The bill has not been officially introduced to date. It remains a discussion draft and Chairman Goodlatte continues to meet with some external stakeholders to determine if there is a path forward with his bill. Even though the Chairman and his staff have not reached out to the Governing Board for input on the proposal, the Governing Board continues to request meetings and discuss with Chairman Goodlatte's staff the SSTGB's concerns and inability to support an origin sourcing bill.

Chairman Jason Chaffetz and Congressman Steve Womack introduced H.R. 2775, The Remote Transaction Parity Act on June 15, 2015. The bill currently has 59 bipartisan co-sponsors. The bill pursues a destination sourcing model for remote sales tax collection. The bill is not identical to the Senate's Marketplace Fairness

Act. The House bill addresses several issues of concern raised after the Senate passage of the Marketplace Fairness Act in May 2013:

1. Small business exemption
2. Audit procedures
3. Software costs and integration
4. Liability relief provisions

The Governing Board remains very supportive of the Chairman's efforts and continues to provide technical guidance and input based on the experience and knowledge it has gained over the last 15+ years in developing the Streamlined Sales and Use Tax Agreement (SSUTA). For example, the Governing Board and the National Conference of State Legislatures (NCSL) partnered in July and December to educate House congressional members about e-fairness and strongly encourage passage of e-fairness legislation this year.

Senate Update

Since the overwhelming passage of the Marketplace Fairness Act in the Senate in May 2013, the Senate sponsors have been working with all stakeholders to enact the bill into law. On March 10, 2015, Senators Michael B. Enzi (R-WY) and Dick Durbin (D-IL) introduced S. 698, The Marketplace Fairness Act of 2015. The legislation is identical to the Senate-passed bill from 2013, with the addition of the Collins/King amendment, which delays the date that states can exercise the authority of the Act and exempts the first holiday shopping season after enactment.

Throughout this year, the Governing Board worked with our Senate champions to educate new members of the Senate. Although the primary focus for most of this year has undoubtedly been in the House, the past six weeks the focus has shifted to both the House and the Senate with a potential of including e-fairness in an end-of-the-year legislative package.

Current Status and Next Steps

House and Senate supporters of e-fairness policy concepts worked together throughout this fall to find a solution. The focus has been on ensuring that the Internet Tax Freedom Act (ITFA) or any other e-commerce or online tax-related bills do not gain traction or consideration without the coupling of a federal e-fairness bill.

Throughout October and November, the House and Senate sponsor staffs worked on a bipartisan, bicameral e-fairness compromise bill - although it has not been publicly released, it is our understanding that the e-fairness compromise bill highlights are very similar to the House bill more so than the Senate bill.

The focus by the House and the Senate sponsors was to include the bipartisan and bicameral e-fairness bill in an end-of-the-year package, such as the Omnibus Appropriations bill. The SSTGB leaders immediately began advocating and solidifying direct engagement between state and local leaders and Congressional leaders to discuss the importance of e-fairness and why it needed to be passed this year. Although e-fairness was a part of the end-of-the-year discussion between

Congressional leaders, the compromise bill faced opposition by many vocal members and Senators, causing the House and Senate leadership to not include the e-fairness compromise in the Omnibus Appropriations bill. The Omnibus Appropriations bill does include another one-year extension of the Internet Tax Freedom Act, which is a similar action that occurred last year when the bill expired in October 2014. The Omnibus Appropriations bill is expected to be voted on in the House and Senate on Friday, December 18.

The e-fairness stakeholders have advocated for some time, coupling e-fairness with an ITFA extension. This advocacy continues - earlier this month, Senator Ron Wyden and Chairman Bob Goodlatte were successful in including a permanent ITFA extension in the customs reauthorization conference report. Although the customs reauthorization report passed the House last week, it has not been voted on yet in the Senate. Our Senate champions and external stakeholders, including the SSTGB, have worked tirelessly with the Senate leadership and rank-and-file Senators expressing opposition to allowing an ITFA extension to move forward without e-fairness policy. The Senate sponsors want to strip the permanent ITFA out of the report before it is considered by the entire Senate. The customs reauthorization conference report has not passed the Congress since 2001 so it is not viewed as a must-pass bill. Due to the loud opposition expressed by e-fairness stakeholders and others regarding other policy concerns such as currency manipulation, it will not be considered this year in the Senate. It is expected that the Senate may consider the customs reauthorization conference report in early 2016. The SSTGB will continue to work with the Senate sponsors to express opposition to a permanent ITFA inclusion in any bill that does not also address e-fairness at the same time.

4. CRIC Annual State Compliance Report - Myles Vosberg, CRIC Chair
Chair Vosberg provided a brief overview of the compliance review process. He thanked Pam Cook for her detailed work on this, as well as Fred Nicely (BAC) of COST for their participation.

This year all of the CRIC votes were unanimous decisions and 5-states were found out-of-compliance. CRIC recommended that 19-states be found not out of compliance. Those states were Arkansas, Iowa, Kansas, Kentucky, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia and Wyoming. However, an industry representative felt that Nevada was out-of-compliance. The issue raised by Val Gibson during Nevada's review is regarding the transportation cost of ready mix concrete. This same issue was discussed at the Governing Board meeting last September. CRIC unanimously voted to find Nevada not out of compliance. Chair Vosberg said based on that information, unless someone would like to discuss any of the 19-states individually, he motioned to find the 19-states that he listed be found not out of compliance. Richard Dobson added that the states could not vote for themselves and must abstain. He said they would be voting for the other 18-states on the list. Craig Johnson explained that a yes vote means the state agrees that the 19-states are not out of compliance and at the same time, they are abstaining from voting on their own state's compliance. The roll of the 23 full member states was called, 22-voted yes, 1-absent and the motion passed.

Georgia

Chair Vosberg said CRIC recommends Georgia to be found out-of-compliance with the same issues from last year:

1. Education local option sales tax generally applies to energy used in manufacturing, but the other local sales taxes provide an exemption for energy used in manufacturing.
2. Georgia has a good faith requirement for accepting exemption certificates.
3. Georgia is not able to accept the SER from all sellers and only from the model-1 sellers at this time.

Chairman Vosberg motioned that Georgia be found not in compliance with the three issues noted above.

Craig Johnson said Section 302 of the SSUTA deals with the local option sales tax issue, Section 317 deals with the exemption certificate/good faith issue and Section 318 deals with the issue related to the SERs. The roll of the full member states was called, 21-voted yes, 1-abstained, 1-absent and the motion passed. Georgia was found out-of-compliance on those 3-issues.

Indiana

Chair Vosberg said Indiana has one compliance issue related to Section 318 in the Agreement. At this point Indiana is not able to accept the SER from all sellers.

Chairman Vosberg motioned that Indiana be found out-of-compliance with Section 318 of the Agreement. The roll of the full member states was called, 21 voted yes, 1-abstained, 1-absent and the motion passed. Indiana was found out-of-compliance on the Section 318 issue.

Michigan

Chair Vosberg said Michigan was found out-of-compliance with Section 313 of the Agreement which deals with direct mail sourcing and is the same issue as last year.

Chairman Vosberg motioned that Michigan be found out-of-compliance with Section 313 of the Agreement. Michael Eschelbach (MI) noted that bills have been introduced in their legislature to address this matter. He said they will have to work their way through the legislative process. He expects they will be adopted in the first part of 2016. The roll of the full member states was called, 21-voted yes, 1-abstained, 1-absent and the motion passed.

Rhode Island

Chair Vosberg said Rhode Island continues to have the issue related to the exemption threshold on clothing. Under RI law, the first \$250 of the sales price of an article of clothing is exempt and any amount over the \$250 is subject to tax. That is not allowed under Section 323 of the Agreement.

Chairman Vosberg motioned that Rhode Island be found out-of-compliance with Section 323. The roll of the full member states was called, 21-full members voted yes, 1-abstained, 1-absent and the motion carried.

Wisconsin

Chair Vosberg said this is a new issue and is the first time it had been brought to the attention of the CRIC. Wisconsin has a county and stadium tax imposed on single payment motor vehicle rentals and sources those transactions to where the vehicle is customarily kept, rather than under the regular sourcing rules contained in the SSUTA.

Chairman Vosberg motioned that Wisconsin be found out-of-compliance with Section 310 of the Agreement. Diane Hardt (WI) said that Wisconsin legislature has introduced a bill that they expect to pass in the first quarter of 2016 to address this issue. The roll of the full member states was called, 21-voted yes, 1-abstained, 1-absent and the motion carried.

President Peters thanked Chair Myles Vosberg and the Committee for the time they put into the state reviews. Craig Johnson repeated that and also thanked the state of North Dakota for allowing Chair Vosberg to provide those services. He said he will be sending out information regarding the 5-states that were found out-of-compliance. Those states will need to submit a statement of non-compliance if they did not indicate they were out-of-compliance initially or an amendment to that statement if something has changed. As provided in the recently adopted SSTGB Rule 809, there will be a public comment period regarding those states that were found out of compliance with the SSUTA and the SSTGB Executive Committee will meet to discuss and develop possible sanction recommendations to the Governing Board related to these states.

5. Reports of Committees

- Executive Committee – Deb Peters, President

President Peters reported that during the December 17, 2015 Executive Committee Meeting teleconference, Craig Johnson's contract was approved for another 2 years, beginning January 1, 2016.

Craig Johnson said Sections 318 and 319 of the SSUTA require the Governing Board to adopt a standardized transmission process for the SERs and for bulk payments. Some thought this was done previously but nothing can be found in any of the GB minutes, etc. Therefore, the Governing Board will need to consider adopting web services as the standardized transmission process. Although most states are doing this already, states will have two years after adoption to get this completed. Craig will be working with the Certification Committee to discuss the issue further and develop the proposed amendment at the upcoming meeting in Little Rock, AR in March, 2016.

Mr. Johnson is also working with Ellen Auger and Darrel Engen, Co-Chairs of the Audit Committee who are putting together an interim review process related to the Appendix F data (transaction/audit data) to help the CSPs identify early on any potential issues with the data they are providing such as missing exemption information, control totals don't tie out, etc. The goal of this interim review is to try to make sure that when the states get to the point of conducting any state tax compliance audits and when the Core Team conducts their contract compliance audits, the data is in the best format possible. He said they are trying to identify any

issues with the data early on so the CSP's have a chance to fix the data and have better data for the subsequent years.

- **Reports of Committees**

- Finance Committee - Victoria Daniels (IA), Chair
 - FYE June 30, 2015 Independent Auditors Report

Chair Daniels said the independent auditors report on FY-2015 found that the Governing Board did not adopt any new accounting policies and did not change the application of existing policies. They found evidence that the significant transactions were properly recognized in the financial statements. They concluded that the financial statements were consistent and clear. There were no disagreements with management and no false representations. They concluded that they had sufficient and appropriate information and the Governing Board is conforming to the accounting principles generally accepted in the United States. There were no questions or comments regarding the report.

- First Quarter FYE June 30, 2016 Financial Report

Chair Daniels reported that the first quarter of FY-2016 was pretty unremarkable. The expenses were in line with where they should be and that all of the state membership dues for the upcoming year had been collected. Funds were approved to accommodate travel to the Audit and Certification Committee meetings. The cash flow statement looks good and the beginning balance was \$866,625. Craig Johnson said since this fiscal year began there have been no additional payments on the new central registration system since the work on it is still being completed. There were no questions on the report.

6. Central Registration System Update – Craig Johnson / David Thompson
Craig Johnson reported that the new Central Registration System (CRS) is still on track for a go-live date in early January. The SSTGB staff and the states have performed numerous tests on the new system. Some bugs were found and those have been or are being fixed.

As far as the states being able to connect to the system and receive the appropriate data, David Thompson has been working with the states on this and keeping them moving. If we do a cut-over to the new system and there's a state that is not ready, there is a manual work-around. The timeline for the cut-over was originally January 4 and that will be pushed back one week. The old system will be taken off line at 5:00 pm on January 3. The states will be able to pull from the old system up to 4:00 pm central on January 4. We will make an extract of the old system as well on January 4. The old system will be shutdown on January 4 at 4:30 pm central. We will bring the new system up on January 11 as that works for the vendor and gives them time to complete the conversion of existing accounts, etc. There are roughly 2700 accounts. He asked if the states had questions and there were no questions.

The go-live schedule has been sent to the ListServs of the people that have been working on it. Craig will also send the schedule to the Governing Board ListServ.

He thanked David Thompson, Jody Bartels, Tim Bennett (KY), Ellen Hefty (WI), Bryan West (AR), Jim Romano (OK), Elaine Bednarz (NC), Joann Seago (NC), Angie Simpson (NC), Jack McCrobie (IN), Heidi Genest (Avalara), Gary Centlivre (Fed-Tax) and all those involved in working with Streamlined in developing and testing the new system.

7. January Planning Meeting – Deb Peters/Richard Dobson

President Peters said a few folks from the business community, the Executive Committee and the elected areas will meet on January 18, 2016. They will hopefully come up with a strategy for e-Fairness. Richard Dobson encouraged those who are participating to be ready because there are a lot of important issues to be discussed. This meeting usually sets the tone of all the Governing Board Committees for the coming year. President Peters said if anyone on this call would like to add a discussion item to that meeting, they should email Richard Dobson, Craig Johnson or herself.

8. Executive Director Notes

Craig Johnson welcomed Jody Bartels to the Governing Board. She has been very involved with Streamlined and has been doing a lot of work with the new Central Registration System.

As a reminder, he pointed out that there are 2-new CSP's that have been certified and the contracts have been signed with Taxify and Taxometry.

The revised SST Agreement has been posted to the web. Craig said that he plans to send out the annual report of all the changes to ensure the states laws, rules and procedures are in compliance with the Agreement prior to the end of the year. Also, he promised Alison Jares that he will email the Post Transaction Issue survey today.

Craig reminded everyone of the upcoming meetings in Little Rock, Arkansas with the Certification and Audit Committees and SLAC. He encouraged the Governing Board members to have their states participate in these meetings. The new registration system will have been in place for a couple of months at that time and this will be a great opportunity for discussions about those items. He said we will try to find ways to make the new system as efficient as possible and are always looking for ways to improve.

The Spring 2016 SSTGB meeting dates have been scheduled in Providence, RI on May 2-4, 2016 at the Omni Hotel. There will be more information provided in January.

Craig thanked Tim Jennrich for his outstanding leadership of SLAC. This is Mr. Jennrich's last meeting as the SLAC Chair. He also thanked Richard Cram who is leaving the Kansas Department of Revenue and will be working for the Multistate Tax Commission, as Director of the National Nexus Program.

He thanked the Governing Board Delegates, State and Local Advisory Council (SLAC) and the Business Advisory Council (BAC) for their participation the past year. President Peters reiterated her appreciation to them as well. She said that hopefully next month we will come up with a strategic plan that will get us across the goal line next year with e-fairness. Richard Dobson voiced his appreciation for Senator Peters as President and for her leadership in 2015.

9. Old Business

None

10. New Business

None

11. Adjournment

With no further business, Richard Dobson motioned to adjourned the meeting at 3:12 pm central.