



SST State and Local Advisory Council

Meeting Minutes

SLAC Teleconference Meeting – March 31, 2009

Steering Committee

Sherry Harrell
Chair
Tennessee

Christie Comanita
Arizona

Richard Dobson
Kentucky

Cathy Wicks
Minnesota

Craig Rook
New Jersey

Vicki Gibbons
Wisconsin

Mike Bailey
*GFOA
City of Renton, WA*

Sonny Brasfield
NACO

Sherry Harrell (TN) opened the teleconference meeting by taking roll of members in attendance. 22 members participated in the teleconference meeting.

Agenda: Delivery Charges and Direct Mail

1. Discussion of any public comments received on the amendment to Rule 327.4 Delivery Charges. Public Comment period ends March 30, 2009.
2. Vote - SLAC's recommendation to the Governing Board on the proposed amendment to the definition of delivery charges.
3. Vote - SLAC's recommendation to the Governing Board for changes in the taxability matrix that corresponds to the amendment to the definition of delivery charges.
4. Depending on comments and approval of the members a vote may be taken on SLAC's recommendation to the Governing Board on the amendment to Rule 327.4 Delivery Charges that correspond to the amendment to the definition of delivery charges. (Depending on Public Comments received, a revised draft of Rule 327.4 may be sent prior to the teleconference call on March 31st.)
5. Section 313 - Direct Mail Sourcing Amendment - A redraft of the amendment will be provided prior to the SLAC teleconference meeting.

Documents

1. Written public comment concerning the proposed amendment to Rule 327.4 received from; 1) the BAC Direct Mail Committee, Kristi Magill Committee Chair and 2) from Gary Yeats, Tax Counsel for Valassis.
2. Drafts of the amendment to the definition of delivery charges and amendment to Rule 327.4 with the suggested changes.
3. Drafts of proposals for amendments to Section 313 and 313.1 from the SLAC Direct Mail Group.
4. Tax matrix changes that correspond to the amendments to the definition of delivery charges. No changes have been made in this document since the 3/19/2009 notice for the call today.

Sherry Harrell (TN) the Delivery Charge definition change only requires 1 vote. It does not change existing definition, just provides more options.

- Kristi Magill (RSM McGladrey)
1. Issue of reference to definition of direct advertising mail and other direct mail - Sherry added language in subsection C of the rule "as defined in Section 313" after advertising and promotional direct mail and other direct mail to clarify the definitions used in Section 313 apply.
 2. Issues with the need for a couple of additional illustrations - Sherry stated the illustrations were added to the document unchanged and are now illustration 4 and 5.

3. Remaining items were organizational and typo changes - Sherry had also made those changes.

Comments from Valasis -- will be reviewed with Valasis.

Ellen Thompson (NE) questioned the sentence in amendment to the definition of delivery charges subsection C. "No member state may require a seller to separately state any delivery charge or component thereof." Also she asked that in the prior sentence that "exemption from sales price" be changed to "excluded from sales price" for consistency. Exemption was stricken and replaced with excluded.

Mark Nebergall (SoFTEC) indicated that business wanted this for prevention of Class Action Lawsuits.

Jerry Johnson (OK) no state requires items be separately stated now. He asked if this statement would need to be included in statutes.

Mark Nebergall (SoFTEC) stated they are not expecting laws to be changed to adopt this language.

Bill Riesenberger (OH) generally, it is required that agreement language be adopted. Now it appears that we can pick parts and not adopt all language of a definition.

Mark Nebergall (SoFTEC) stated that states do not have to adopt verbatim language, just substantially comply. And, that in his opinion states only need to adopt the 1st paragraph of definition.

Jane Page (SD) asked if this should include products delivered electronically. Discussion indicated that this was included in personal property.

No other questions or comments on Rule or Definition

Consensus on definition: 21 yes 1 abstain Will be recommended to Governing Board. If meet again prior to May meeting and have quorum, may call a vote on this definition, though not required.

Consensus on Rule 327.4: 18 yes 4 abstain Will be sent to CRIC and noticed as a SLAC interpretive rule for May Gov Board Meeting.

Sherry Harrell (TN) opened discussion on changes to Taxability Matrix for delivery charges.

Bill Riesenberger (OH) indicated was consistent with amendment to definition
Mike Eschelbach (MI) has issues with working in lines 12 and 15 as did Virginia.

Jerry Johnson (OK) The matrix does not need to be completed for the May meeting. It can be worked on and changed after the definition is adopted.

Richard Dopson (KY) indicated that any revisions that breakout options for “separately stated” and “not separately stated” may result in contradictory answers.

Sherry Harrell (TN) opened discussion on additional documents of amendments to Section 313 and 313.1 Direct Mail Sourcing. Section 313.1 is included in the amendment to be sure wording in both reflect same language.

Jerry Johnson (OK) stated the proposed amendment to Section 313 replaces current Section 313. A.4. was added because states did not want purchaser to not give destination info or direct pay the use tax, the last sentence was added to give states option of allowing credit if sourced under 310.A.5 (seller’s location). Also had discussed option that may be added, that nothing shall preclude purchaser to file refund claim to state tax was paid under 310.A.5. Per discussion this is already in subsection D.3. Section 313.1.B. “on such transaction” was intended to limit what this section applied to and we are open to suggestions to improve or clarify this language. Section 313.B.4. was added to prevent abuse of purchaser issuing exemption certificate then not paying use tax to states where items were delivered. Sellers do not have liability in this case until noticed by the state. Expect that BAC will have a call to review and comments will be made quickly. Intent is to file amendment to Section 313 and 313.1 with Governing Board for May meeting.

Sherry Harrell (TN) Section D.2. There are issues with bundled transaction language. The taxability of a bundled transaction can’t be determined until it is sourced. Whether a transaction is a bundled transaction or not does depend on taxability questions. Also there were questions as to what the words “primary purpose” means. Suggest that language referring to bundled transaction be removed and perhaps replace with “in case of delivery of direct mail with other products or services. Open to discussion and suggestions from BAC since they originally proposed this provision.

Kristi Magill (RSM McGladrey) Gave example of a bundle as an advertising campaign, where a component is direct mail, others are radio and TV ads.

This section requires additional work.

Bill Riesenberger (OH) Regarding Section 313A.1. and B.1.a., do we need to identify which state the direct pay permit is required from (state to which the sale is sourced)? Discussion is that this question is more than a direct mail issue seems to be an exemption issue under Exemption Administration according to Section 317. Richard Dobson (KY) stated he agrees with the need to be clarified. This is a potential area that could create a dispute if allowed by a state other than where items are sourced to.

Sherry Harrell (TN) Direct mail will be sourced as explained in Section 313 or 313.1. States must adopt one or the other. Sourcing in 310 and 310.1 is for products and services other than direct mail. Expect to hear additional comments from BAC on Sections 313 and 313.1.

There is a need for another SLAC call and possibly a direct mail workgroup session again after the BAC call.

The amendment needs to be to Governing Board by 4/10/09 for May meeting. Do not need to notice CRIC for amendments only rules.

Meeting Adjourned.