



# SST State and Local Advisory Council

## Meeting Minutes

### SLAC Teleconference Meeting – April 22, 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:** Replacement Tax - During the SLAC teleconference call on February 24th many members expressed concerns regarding the proposed amendment presented. Several members indicated a desire to go back to AM08014A01 and draft a corresponding rule to go with that amendment.

During the teleconference meeting on March 30, 2009 members of SLAC and BAC reviewed the new proposal for an interpretive rule that would go with the proposed amendment AM08014A01. It was decided that the draft rule would be noticed for the Governing Board meeting as drafted with edits submitted by Washington that were discussed during the teleconference. The SLAC chair would submit the rule for final public comments and notify CRIC of the new interpretive rule. The public comments period will end April 21, 2009.

A consensus / vote may be taken on a revised version of Rule \_\_\_\_ Prohibition of Replacement Taxes to submit to the Governing Board for notice 10 days prior to the May 12th Governing Board meeting.

#### **Documents:**

- 1) AM08014A01 Oklahoma replacement tax amendment
- 2) 3-31-09 draft replacement tax rule distributed for public comments, filed (RP09006) and submitted to CRIC.

#### Public Comment documents:

- 3) BAC proposal for replacement tax rule a strike through version and clean version.
- 4) BAC proposed changes to Bill Riesenberger's proposal for a replacement tax rule
- 5) Bill Riesenberger's proposal for a replacement tax rule, redline version and clean version.

Sherry Harrell (TN) noticed the Rule to go with the Amendment AM08014A01, public comments were received on the draft rule from BAC and Ohio. A lot of emails with questions were received but no other official public comments. The Rule was also sent to CRIC pursuant to Rule 902.1. Any changes made as a result of today's call will also be forwarded to CRIC.

#### Jerry Johnson (OK) discussed the Interpretive Rule related AM08014A01 dated 3/31/09.

The concept was to keep the rule as narrow as possible. When we try to do an all encompassing rule it is difficult to pass. Jerry agrees that this rule does not provide a lot of guidance. If future objectionable items are found by the governing board, the rule can be amended at that time. Jerry's opinion is that if the states agree on an alternate draft he can go along with it, if sufficient support is there.

Bill Riesenberger (OH) discussed Ohio's proposed rule. He stated the rule should provide guidance as to what is prohibited. Discussed language as to the Governing Board's determination or the Governing Board "shall" determine. This draft includes a list that attempts to list items that are not replacement taxes under any circumstances. Bill discussed why a use tax component is or is not necessary to determine if a tax is a replacement tax. 3.f. in the Ohio draft rule is limited to local tax. Questions were raised - could those taxes also be a state tax? (i.e., tourism tax) Regarding 3.b. in the Ohio draft, general sales tax is based on a dollar amount. If based on something other than price, the tax would not be a replacement tax. Discussed whether this item could be removed. Discussion regarding the language in 3.e. should be same as 2.e. The section is intended to set timelines as to when changes made would be considered an avoidance of agreement requirements.

Comments were made by Fred Nicely (Council on State Taxation), Cathy Wicks (MN), Ellen Thompson (NE), Jerry Johnson (OK), Greg Potegal (WA), Mike Eschelbach (MI), Richard Dobson (KY)

Does section 3 mean that in all instances those taxes or fees listed are not replacement taxes? There are questions as to requirements to meet terms of agreement when definitions are provided for certain items and a state is anticipating becoming a member. There are also questions as to future definitions that may be developed and if these will be applied to taxes states currently have in place. Is this retroactive? If state has already been found in substantial compliance but an issue is brought up at a later date - will the state need to change laws for items that were previously approved (or at least not objected to). Essentially a state can currently tax, other than sales tax, an undefined item anyway they want to.

Bill Riesenberger (OH) suggested that if the tax was previously imposed by statutes not subject to agreement they should not need to be changed. Mike Eschelbach (MI) questioned that a tax at the time adopted didn't violate the intent of the agreement but may be an issue 5-10 years later when the agreement may change.

Jerry Johnson (OK) - the Rule now states that no state may have a replacement tax, instead of no state may enact a replacement tax.

Mike Eschelbach (MI) has more comfort with Ohio's proposed rule. As a general concern neither rule gives strict guidelines for the governing board or states to follow. Cathy Wicks (MN) would like to see assurance that if in compliance one year and no new definitions will continue to be in compliance.

Fred Nicely (Council on State Taxation) discussed BAC proposal.

Use Tax component - if it is listed as a factor, does it make it easier to view as a replacement tax. Sales tax is imposed on price or gross receipts. They do not think Section 4 is needed. BAC made a major concession as they removed proposed language that the burden was on the state to prove that a tax was not a replacement tax. It was understood that the Governing Board would not support that language.

Jerry Johnson (OK) indicated that some factors to consider with the drafts are – if it leaves a lot of uncertainty. Governing Board has flexibility to consider additional factors. When you list specifics it also shows ways for states to get around the specifics.

Sherry Harrell (TN) asked if Ohio, Michigan, Fred Nicely and other states could get together and work on language for an alternative proposal. The alternative draft of a replacement tax rule will need to be sent to her so she can forward to Governing Board since it is an

Interpretive Rule. The latest draft of documents for the Governing Board must be noticed 10 days prior to May meeting. Otherwise, changes in noticed documents (RP09006) will have to be made from the floor at the Governing Board meeting. Proposed rules must also be sent to CRIC. Sherry's indicated to members on the call, at this point, SLAC appears to have 2 different options or trains of thought. Until this 2<sup>nd</sup> option is drafted and states have a chance to review and discuss, SLAC does not have a recommendation and no clear indication as to which option is preferred.

Meeting adjourned.