



SST State and Local Advisory Council

Meeting Minutes

May 14, 2009 – Arlington, VA

Steering Committee Sherry Harrell opened the meeting in Arlington, Virginia

Sherry Harrell
Chair
Tennessee

Welcome and Introduction

23 delegates present and introductions were made

Christie Comanita
Arizona

CRIC assigned to SLAC interpretation request RI09001 related to an Arkansas state law for use tax on services sourced to Arkansas. May 19, 2009, Scott Peterson sent email that the interpretation request was withdrawn by Mr. Denton Childs.

Richard Dobson
Kentucky

Sourcing Services Rules Work Group – Breakout session

Cathy Wicks
Minnesota

Section 310.1.C.7

Sourcing services and property on same invoice was discussed. The problem is that tangible personal property is generally sourced to destination while services may be sourced to origin.

Craig Rook
New Jersey

Vicki Gibbons
Wisconsin

An example was provided by Mark Nebergall, SoFTEC, on software maintenance. A sale includes maintenance contract upgrades and calls for technical support. Charges are on the same invoice, but separately stated. The sale is to an in-state purchaser. The state has adopted Agreement Section 310.1. Tangible personal property is sourced to origin while services are sourced to destination.

Mike Bailey
GFOA
City of Renton, WA

Sonny Brasfield
NACO

Bill Riesenberger, Ohio, asked for any recommendations. Mark Nebergall, SoFTEC, suggested that if services are involved, source tangible personal property to destination. Mark Haskins, Virginia, asked why services couldn't be sourced to origin instead. Mark Nebergall, SoFTEC, responded that doing so could lead to a service provider making location decisions based on who can charge the lowest tax rate.

Robert Thompson, Oklahoma, asked whether there is a problem with Section 310.1 now. Nebraska responded that Section 310.1 allows for origin-based sourcing of services and could lead to competition issues.

Cathy Wicks, Minnesota, requested clarification on the situation being discussed. Mark Haskins, Virginia, indicated that the situation being discussed is - 1 transaction with 2 components (tangible personal property and service) and the tangible personal property goes to origin - why not source service to origin so that it is sourced the same as tangible personal property? He went on to indicate that it would be the easiest for sellers to source them to the same place and made the recommendation that the service sourcing following the tangible personal property sourcing.

David Somerville, Grant Thornton, indicated that in Texas, the locals rebate sales tax back to the origin.

Bob Scott, Texas, indicated that the origin issue is big in Texas but doesn't believe based on his knowledge of Texas, that a customer is going to choose one vendor over another based on the small tax differential – they are going to choose based on quality of service.

Jane Page, South Dakota, inquired as to how Texas would source this example today.

Bob Scott, Texas, indicated that if the carpet cleaning is done in City A and they also sell tangible personal property – then currently the sale is sourced to City A (tangible personal property and service).

David Somerville, Grant Thornton, also added that waste collection services and nonresidential repairs are sourced to destination in Texas.

Scott Peterson indicated that if there is a repair to a commercial building and carpet cleaning on same invoice, the repair is sourced to destination and carpet cleaning is sourced to origin.

Ann Kasson (State Farm) – raised the issue of providing services by themselves as opposed to services with tangible personal property and pointed out that they would be sourced differently - landscaping services provided alone would be sourced one way, but landscaping services with tangible personal property would be sourced differently.

Mark Nebergall, SoFTEC, indicated that the business community thinks that if there is tangible personal property and a service on the same invoice, then source to destination. Craig Johnson asked Mark if he meant this to apply to an invoice where there is any tangible personal property on the invoice – no matter how minor, then always source to destination.

Mark Nebergall's response was that if there was any tangible personal property then source to destination - assuming the service is sourced to destination then tangible personal property should go to destination also.

Jane Page indicated that this is an area we are still waiting for more examples. We need more examples so that the decision covers those examples as well – but until we have more examples, it will be difficult to come up with decision to cover them all.

Ann Kasson, State Farm, indicated that there need to be some examples for transactions between an SSTP state and non-SSTP state to explain how those should be handled since some non-SSTP states source to where service is provided, but the SSTP state would source to destination if first use is made in SST state. Whose tax is owed?

Cathy Wicks suggested putting together a chart identifying the pros and cons to help determine which sourcing method would be the best.

The states that have this issue at this time or that have a great stake in this issue that were identified at the meeting are Ohio, Texas, Utah, Illinois and Tennessee.

Jane suggested moving to the next sourcing services work group topic. She indicated that there are 4 categories that the workgroup has to cover and this will take some time and suggested that we first start with writing rules for one category and then move on to the next. Jane wants to start with the category that covers services to tangible personal property.

Services to TPP

South Dakota indicated that prior to SSUTA sourcing rules, South Dakota sourced to the location where the service took place. After SSUTA sourcing rules were adopted, South Dakota sourced to where purchaser receives the repaired/serviced product.

A question was raised as to what the requirements are for giving credit if states tax differently (i.e., one taxes to location where service takes place and other taxes based on where

purchaser receives the repaired/serviced product). Bill Riesenberger, Ohio, indicated that it depends on the criteria of the states, but typically the state where the tax is first legally due and owing gets the tax. Sherry Harrell indicated credit issues will be part of the efforts of the credit issues work group and will not be part of the sourcing services rules work group efforts.

Mark Nebergall, SoFTEC, thought that Rule 309.3 Sourcing Computer-Related Services may have addressed where these types of transactions should be sourced already.

Bill Riesenberger, Ohio, went through the examples in Rule 309.3 and indicated that it does not appear to specifically address this situation.

Mark Haskins, Virginia, asked, "Why not apply this principle to all services to tangible personal property?"

Judy Niccum, Minnesota, inquired about towing services and also the need to have a specific example of a situation where an item is repaired at the seller's location and then shipped to purchaser's location to make it clear where the service is sourced.

Jane Page suggested expanding the interpretive examples in Rule 309.3.

There were 13 states present, and Jane inquired as to how many of them do not source repair services to tangible personal property based on destination.

Loren Chumley indicated that Tennessee taxes based on where service is performed and mentioned the Kraus Model Cleaners Laundry case.

A discussion was then held related to towing and whether towing services should be sourced based on where the vehicle is picked up versus the location to which the vehicle is delivered. Different states are apparently doing different things.

Arkansas brought up the issue of allocating towing services based on the miles in Arkansas versus miles in Oklahoma.

Washington uses the location from which the tow truck is dispatched.

Ohio uses the location where vehicle is picked up for interstate sales but the location where the vehicle is dispatched from for intrastate sales. Bottom line is states are doing things differently right now.

A question was then raised concerning the sourcing of armored car services when multiple stops are made. Should the service be sourced to the first stop, last stop, or allocated among stops?

Mark Nebergall, SoFTEC, asked about legal fees in South Dakota; the question was, "what happens if the attorney writes the brief in South Dakota and then files it in another state?" Jane Page indicated that it would not be subject to tax in South Dakota, but if the brief was sent to South Dakota, then the full amount of the legal fees would be sourced to South Dakota and subject to tax.

In the interest of wrapping up this initial meeting, Jane Page, South Dakota suggested the workgroup develop a generic rule on services to tangible personal property. She also

indicated that this will be complicated and things will change, so we all need to keep an open mind.

Direct Mail Work Group - Breakout session

5/01/09 Draft Rule 313.1 Direct Mail Sourcing was discussed. Draft 5/01/09 has gray shaded areas which are areas that have been moved to reorganize the rule to better follow the layout and provisions of amendment AM09005A01.

Additional suggestions for changes:

C.4 - Example: Removed "perform data processing services."

B.5 - Move paragraph to D.5. For paper and ink, you claim resale which is not a sourcing issue. This should go in section D Special Provisions. BAC and SLAC members present were okay with that.

C.1 and D.1.b - Data processing beyond prepping to print is not intended to be direct mail. Need to address variable imaging/printing as not being data processing. Need to add examples.

There was discussion about distinguishing processing to provide a method for delivery rather than affecting the content of the printed material. However, processing to determine some content is data processing that would be considered incidental (e.g., pulling a piece of customer information necessary to deliver to the customer).

Group discussed use of terms that might be an alternative to using the term "integral" such as "essential," "incidental," "true object."

Ellen Thompson (NE) raised the need to distinguish activities by mail houses vs. printers.

Discussed using a % to define what is integral or incidental (e.g., 10% for de minimis, exclusive, 50% for primary). There is a problem in defining how that % is measured.

This may need to be addressed through examples or lists of what is in or out, but not all inclusive. Task of participants is to send examples to Sherry dealing with mailing vs. printing, data processing vs. printing, assembly vs. printing.

Kristy Magill, RSM McGladrey, will ask her contact with PIA for examples apart from variable imaging/printing.

D.2 - Kristy Magill, RSM McGladrey, wants to get additional input on whether bundling is an issue. Question is whether we should just look to sales price since there is no measurable purchase price for services. The only identifiable cost would be labor. The group discussed whether this section is really needed. It is common for advertising contracts to have distinct and identifiable charges. Customers are generally picking from a menu where price varies depending on selections. Examples are needed from industry if there are situations that could meet the one non-itemized price of the bundled transaction definition.

Taxability matrix –

Comments received from the general public and other Governing Board committees will be used to update the taxability matrix. The sales price/delivery charge section of the matrix updates are reflected in the book. Public notice will again be given to get additional comments. The taxability matrix updates will be an ongoing process, but members need a final draft at this point and in time for re-certification and voting by the Governing Board.

Kathy Neggers, GE, Trade-ins – motor vehicles vs. other property may need to be broken down. Some states which have motor vehicle taxation in their sales tax law may or may not allow trade-ins. Other state trade-in requirements include tangible personal property for tangible personal property or new vs. used. Exceptions for motor vehicles in agreement are limited to caps thresholds, rates, sourcing – there is no exception in this instance.

We need further clarification of what a person does based on sales price information in the matrix (if included in sales price – you can't deduct it, is included in sales price unless a state elects to exclude)

Scott Peterson indicated states need to remember who the audience is. What does "included" or "excluded" mean to the person who is looking at the matrix?

Mike Eschelbach, Michigan, provided separately stated information in the introduction may not be looked at by people. They only look to the specific product lines. However, to address the separately stated concept on every line of the sales price/delivery charge section adds redundancy.

Val Pfeiffer, Tax Coefficient, added handling and shipping provisions need to reflect separation as a result of the delivery charges amendment AM09004A01.

Richard Dobson, Kentucky, stated members need to look at proposed amendments to the Agreement and the impact on the Taxability Matrix.

Delivery charge amendment changes to matrix – there were no additional comments. Further review will need to be made regarding adding "as defined by the agreement" to the delivery charge for direct mail section of the matrix.

Memo from Certification Committee

- As to delivery charges with exempt purchases and delivery charges with taxable purchases – there are concerns about redundancy.

Sherry Harrell, Tennessee – The certification committee's proposal for delivery charge language tends to treat delivery charges like a product definition. No state taxes delivery charges apart from the sale of tangible personal property or taxable service except maybe Minnesota in the case of a third party providing transportation or delivery of aggregate (e.g., rock).

- In many instances a state will put an asterisk to explain answer included in the matrix which is problematic to individuals using the matrix. States must be able to answer with a simple yes/no answer.

CSPs raised issue of asterisks to the Certification Committee because when testing, they couldn't decide how a state was taxing. Test desks need yes or no answer. We may have to default to yes and know there are special circumstances.

- As to the combined listing of animal and human use of drugs and a separate listing for human use drugs - many states have exemptions for drugs used in treatment of livestock and not for treatment of pets.

States need to make a decision as to what is the purpose of matrix – to provide taxability and address only product definitions or to also include use and entity based exemptions related to the product definitions.

Charles Collins, ADP Taxware, thinks the matrix needs to be limited to product-based exemptions and stay away from use and entity-based exemptions.

Cathy Wicks, Minnesota added the exemption administration group had a recommendation in their paper to add parts to the matrix for use based and entity-based exemptions. This was never implemented by states.

Kristy Magill, RSM McGladrey agrees – otherwise additional columns will need to be added to the matrix.

Scott Peterson – what about the purchasers? He understands the matrix is intended to address sellers.

Charles Collins, ADP Taxware – Maybe we do need to add sections to the matrix for use and entity-based exemptions.

Sherry Harrell suggested that maybe we should consider a part 2 to address use and entity-based exemptions just for items that are on the taxability matrix rather than all entity and use based exemptions.

David Somerville, Grant Thornton, suggested maybe we should also consider the need to list whether you need certificate or not.

Miles Vosberg – There are already entity and use-based exemptions in the taxability matrix.

- Prewritten software/non-prewritten – Changes will be made in the matrix to create breakout between the two types of computer software.

Good Faith -

SLAC needs a work group for this topic. Governing Board could consider in September if completed. Certification committee has done some work on a proposed rule related to good faith, RP09001. Jody Bartels/Bruce Christensen did a paper, MC09002, on Relaxed Good Faith Requirements.

Relaxed good faith is reducing requirements on a seller to exercise “good faith.” “Good faith” is a legal term. Governing Board comments raised some questions about the proposed rule. Rule needs additional work and assigned to SLAC.

Volunteers for work group are Dana Angell West Virginia, Cathy Wicks, Minnesota Val Pfeiffer, Tax Coefficient, Art Rosen, McDermott Will & Emery, Bruce Christensen, South Dakota, Craig Johnson, Wisconsin, Charles Collins, ADP Taxware.

Sherry will set up first teleconference. This is before us today because of provisions in the federal legislation.

Disaster Preparedness Supplies – Sales Tax Holiday Definitions

Andy Sabol, North Carolina talked about the teleconference held. The discussion started as hurricane preparedness but decided to broaden to natural disasters. We looked at listed

items used by several southern states and then broke into categories of items where states could pick and choose the categories. The group started with four categories and may consolidate down to three. However, because the group is expanding the use to natural disasters, the group will consider if additional categories are needed for natural disasters for a tornado, hurricane, snow, or ice.

SLAC will need a new leader of the work group since Andy is retiring. Mark Haskins, Virginia, agreed to take over the lead of the group from Andy. SLAC would like to have proposals ready by September meeting.

Deborah Bierbaum, AT&T, wants to add to the list some specialty cell phones (satellite phones that work when cell towers are down).

Tom Atchley, Arkansas – for states that have a sales tax holiday – how much announcement is given – Agreement requires 60 days notice prior to the start of a sales tax holiday. These definitions are intended to be for disaster preparedness sales tax holiday – not an after the fact tax holiday.

Direct Mail Work Update

Work group is trying to add language to the rule to give direction for data processing that is incidental and does not change the nature of the sale of printed material that qualifies as direct mail. They are working on some examples to address the concept of processing related to printing that is direct mail or not direct mail.

The group is still working on the bundling issue, sales price vs. purchase price, and whether there is a need for language in the rule.

The expectation is to have rule ready before next Governing Board meeting. Sherry Harrell recognized Ellen Thompson, Nebraska, Judy Niccum, Minnesota, Robert Thompson, Oklahoma, and Kristy Magill, RSM McGladrey for all the work on the direct mail issues.

Tribal Government

This is an assignment from Governing Board. States with tribal governments need to be included in the work group – WI, ND, AZ, TX, NC, NE, OK, WA, MI, SD, KS.

Scott Peterson indicated the goal is to make it work – not drive the tribes crazy.

Sherry Harrell will set up the first call, but work group needs to pick leaders. This will apply only to Tribes that impose sales and use tax.

Christie Comanita, Arizona, indicated states need to send tribal contact information to Sherry Harrell and Scott Peterson.

CRIC

Three requests on food definitions that CRIC will be handling. States should draft comments and send to Andy Sabol, North Carolina.

BAC

Fred Nicely indicated BAC has concerns about the certification process. He thinks SLAC needs to look at the rule and make suggestions.

Scott Peterson indicated this is an obligation of CRIC.

Russ Brubaker, Washington indicated the procedural rule should be open to other members rather than just CRIC. Andy Sabol, North Carolina indicated he will put on the next CRIC agenda.

Dale Vettel, Michigan, indicated an interpretive rule maybe needed to define what is substantial compliance. Sherry Harrell will talk to Andy Sabol, some more.

Business Meeting

Sherry Harrell called meeting to order

Attendance: 23 delegates present - AR, IN, IA, KY, MA, MI, MN, NE, NJ, ND, OH, OK, SD, TN, VT, VA, WA, WV, WI, GFA, NAC, NLC, USCM.

Approval of Minutes - Mike Eschelbach, Michigan, made motion to accept all minutes. Motion was approved.

Jane Page, South Dakota, gave an update for the sourcing services rules work group. Two topics –

1. Section 310.1.C.7 - Intrastate sales only (service and tangible personal property) both going in different directions. Default rule and other factors such as how much relates to each (tangible personal property and service) on the invoice. Group decided to get states together that have origin sourcing and work on an agreeable solution to take to the whole work group. We need examples beyond landscaping and software.
2. Sourcing services under Section 310.A for all members
Repair to tangible personal property – most states source to where repaired tangible personal property is picked up. Some states are sourcing where repair takes place. There is Rule 309.3 on computer-related services that we may pull from. The group discussed sending an interpretation request to CRIC or answering the question in a rule. Group found there were only a few inconsistencies with sourcing of services to tangible personal property. Some states can't change until there is a rule.

Sourcing rules related to services such as towing, accounting, etc., would be in another rule.

Sherry Harrell indicated the goal was to have the Direct Mail Rule ready for vote when the amendment AM09005 is voted on a second time by the Governing Board. Sherry Harrell will set up first teleconference for work group.

Sherry Harrell will set up first teleconference for the good faith work group and hopes to have ready for the September meeting. She will talk to others including Scott Peterson regarding the compliance review process and rule

Public Comments:

Fred Nicely, COST, – Section 310.1 – Is anyone looking at what will happen at the end of this year regarding Section 310.1? There may not be five states that have adopted Section 310.1 by 12/31/2009 as required. Scott Peterson indicated he will have someone will look at this.

Taxability matrix - Work group will finalize updates in June for sales price/delivery charges and for the few other issues brought up by Certification Committee. The work group will revisit other changes and updates after June for the 2010 reporting period.
Meeting adjourned.