



SST State and Local Advisory Council

Meeting Minutes

August 20, 2009 – Teleconference

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 opened the teleconference/webinar meeting. She provided the agenda items for the teleconference and indicated there would be an announcement regarding the good faith work group at the end of the teleconference.

Agenda:

- 1) Disaster Preparedness Supplies - Sales Tax Holiday Definitions and White Paper
- 2) Rule 313.1 – Sourcing Direct Mail (8/12/2009)

No revisions have been made to documents originally distributed for the Disaster Preparedness Supply sales tax holiday definitions.

Revised documents for Rule 313.1 Direct Mail Sourcing, including a clean and highlighted version of the rule were distributed.

Welcome and Introduction

Twenty-three delegates present and introductions were made. Sherry Harrell, Chair indicated that because there are not 27 members present, SLAC would be taking a consensus of the participants regarding the items on the agenda but would not be taking an official vote.

Disaster Preparedness Supply Sales Tax Holiday Definitions

Mark Haskins, Virginia, reviewed the white paper and definitions. He indicated that the only change to the list of items in each category of the disaster preparedness definitions, since the last SLAC meeting, was the addition of satellite phones. Satellite phones are phones capable receiving and sending phones calls when cell tower service is down.

Sherry Harrell, Tennessee, asked whether the workgroup had considered a separate category for marine disaster preparedness supply. Mark indicated that most of the items in the fastening category have generic uses and only the boat anchor would be specific to marine use. States electing to exempt disaster preparedness fastening supplies during a sales tax holiday must also exempt boat anchors under the proposed definitions.

No other comments were received.

Mark Haskins, Virginia, made a motion to forward the definitions and list of items in each defined category to the Governing Board for notice for the September Governing Board meeting. Cathy Wicks, Minnesota seconded.

The consensus of the participating SLAC members was 23-yes, 0-no, and 0-abstain to move the definitions forward. Jane Page, South Dakota, suggested that an official vote be taken during the SLAC September business meeting. Sherry indicated she would add the definitions to the agenda for the business meeting on Tuesday, September 29, 2009. Bill Riesenberger, Ohio, ask for clarification that what was just voted on was the definitions and not the amendment since the definitions had not yet been put in amendment form. Mark

Haskins agreed and indicated the definitions would be put in amendment form for notice to the Governing Board and for the SLAC business meeting.

Rule 313.1 – Sourcing Direct Mail

On August 5, 2009 a draft of a proposed rule, dated August 4, 2009, related to the amendment AM09005A01 to Section 313 Direct Mail Sourcing, was noticed for the public comment. The public comment period began August 5, 2009. The public comment period ends August 24, 2009.

The SLAC/BAC direct mail workgroup held a conference call August 12, 2009. Comments and suggestion were received from both SLAC members and BAC members. As a result of the recommendations, a highlighted version showing the recommended changes in the proposed rule, SL09004 and a clean version, SL09005, dated August 12, 2009, was added to the public comment notice and distributed for this teleconference/webinar.

Sherry Harrell indicated public comments were received from Craig Rook, New Jersey, and Kristi Magill, Chair of the BAC direct mail workgroup, and will be included in the minutes. The public comments as well as other comments and suggestions received during the meeting, were addressed during this meeting.

Additional changes to draft rule SL09005, dated August 12, 2009, made during the SLAC meeting were as follows:

Kathy Neggars, GE, suggested the term “store” is too restrictive in Section A.3.b.ii. Sales might be from an office or agent location and not a store. Participants agreed to change the term to “sales”.

- allocation based on sales volume of the direct mail purchaser’s sales locations in a jurisdiction as a percentage of the total sales volume of sales locations within the distribution area.

After further discussion participants agreed additional language should be added for an option for an allocation method based on sales volume without specifically referring to locations.

- v. allocation based on the sales volume of the direct mail purchaser in a jurisdiction as a percentage of the total sales volume with the distribution area.

After further discussion, participants decided to clarify that if one of the listed allocations methods is used, the state bears the burden of proving the allocation does not fairly represent the actual distribution by moving the last sentence in A.3.b to the second sentence of the paragraph. BAC also recommended the following change in the last sentence of subsection A.3.b:

- Other allocation methods may be used but the burden of showing to a state that the allocation fairly represents the actual distribution of the printed material in that case will be on the purchaser.

Kathy Neggars, GE, suggested putting language in to require sellers to list what states’ taxes are being collected.

Mark Nebergall, SoFTEC, disagreed saying that was an issue between the purchaser and the seller. Many on the call concurred.

BAC recommended and participants agreed to add the phrase “as other direct mail” to subsection C.1 for clarity.

- When both “advertising and promotional direct mail” and “other direct mail” are combined in a single mailing, the sale is sourced as other direct mail under Section 313.B or (313.1 in states that have adopted the origin-based direct mail sourcing.

Craig Rook, New Jersey, recommended correction of cite to 313.B instead of 313.B.1 in the last sentence of the example in subsection C.1.

There was discussion regarding subsection D.1.a including questions regarding what the correct cite is for the direct mail definition rule, RP09008, approved at Governing Board meeting in Arlington. Scott indicated he would correct the rule cite once RP09008 was added to the SSUTA and correctly numbered. BAC suggestions were accepted for this subsection.

- 1. a. Sales of products characterized by state law as a service where the result of the service meets the definition of direct mail as provided in Rule 327.__(1) are sourced under Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing.

Participants recommended additional edits to the last sentence of the second paragraph of subsection D.1.b.

- To the extent variable printing/imaging constitutes data processing, because it is not for purposes of generating, acquiring, compiling ~~compiling~~, developing or summarizing data, the data processing is incidental.

BAC recommended the term “end user” be changed to “purchaser” in Example C of subsection D.1.c.

BAC suggested subsection D.4 be moved to Rule 317 and deleted from this rule. States participating in the call did not agree. States felt persons wishing to find information and provisions related to direct mail will be looking to the direct mail sourcing provisions of the Agreement and not the exemption administration provisions of Rule 317. Claiming direct mail is not claiming an exemption. No one participating in the call thought the provisions of D.4 were incorrect.

BAC and SLAC agreed to make the following changes to subsection D.4. Move the sentence that begins with “Other reason codes...” to the next to last sentence in the paragraph and make an additional change in the last sentence such the last two sentences state:

- Other reason codes such as “manufacturing” or “sales for resale” may be appropriate. Nothing in this provision changes provisions in Section 317 of the SSUTA for sellers obtaining exemption certificates or other documentation from purchasers.

Vicki Gibbons, Wisconsin, made a motion to move the Interpretive Rule 313.1 Sourcing Direct Mail to CRIC and to the Governing Board as amended during the call. Motion seconded by Cathy Wicks, Minnesota. The consensus of the participating SLAC members was 18-yes, 0-no, and 1-abstain to move the definitions forward.

Sherry Harrell said because of the length of the call, the good faith proposal would not be added to the agenda. Instead, an open good faith work group teleconference will be scheduled shortly and the work group would review the drafting group’s proposal for an

amendment to Section 317 instead of an interpretive rule. All SLAC, BAC or members of the public will be invited.

Meeting was adjourned.