



# SST State and Local Advisory Council

## Meeting Minutes

**October 15, 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. She indicated that Loren Chumley had requested additional time to provide information for the discussion of RI09007 and IO09005. In response to the request and without objection, the order of the agenda items was changed. Once the other agenda items were completed, the teleconference would be continued to October 27, 2009 at 2:00 central for the discussion of RI09007 and IO09005.

**Revised Agenda:**

- 1) Revision to the proposed amendment to Section 317
- 2) RI09012 – Mr. Tilton – Do breakfast cereals, breakfast bars, rice cakes and Rice Krispie Treats meet the definition of candy? Is a high percentage of sugar content a determinative factor whether a food is considered candy?
- 3) RI09007 & IO09005 – request by Loren Chumley – Employee Points Program

**Welcome and Introduction**

Roll was taken. Twenty-eight delegates were present.

**Proposed amendment to Section 317 – AM09017**

Sherry Harrell began the discussion by providing an update.

Proposed federal Streamlined bills contain language that provides states “shall relax good faith requirements for acceptance of exemption certificates.” SSUTA Section 317.C.1. provides, “For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement.”

The certification committee prepared a proposal for a rule RP09001 and a paper MC09002. The rule defined a good faith standard for exemption certificates obtained during the additional 120 day period states must give sellers under audit to obtain certificates. The paper MC09002 listed the components of simplification of the exemption administration process in Section 317. The documents were presented to the Governing Board at the May meeting in Arlington. The Governing Board assigned to SLAC. The workgroup decided rather than adopting a rule to define a good faith standard, the SSUTA should be amended. During the September SLAC Oklahoma City meeting, SLAC worked on a proposed amendment to Section 317. At the Governing Board meeting, Wisconsin filed the BAC’s proposal AM09017 to amend Section 317. The Governing Board assigned AM09017 to SLAC.

Bill Riesenberger reviewed the current draft of the proposed amendment SL09073A01 and recent discussions with workgroup members. Bill stated, if an exemption certificate is accepted during the 120 period after a state’s request: 1) the exemption must be available; 2) the exemption must be applicable to the item; and 3) reasonable for the purchaser’s type of business. “Good faith” remains in the amendment and the amendment provides a uniform

standard of what it means. The following additional changes were made in SL09073A01 during the call.

1) Added the following underlined sentence at the end of Section 317.C.1.

C. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale. A member state may provide for a period longer than 90 days for sellers to obtain the necessary information.

2) Deleted the words “reason type” from Section 317.D.1.

a. Obtain a fully completed exemption certificate from the purchaser, taken in good faith, which means that a seller obtain a certificate that claims an exemption ~~reason type~~ that (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, (ii) could be applicable to the item being purchased, and (iii) is reasonable for the purchaser’s type of business; or

3) Delete, the words “by statute” from the following sentence.

A member state may provide ~~by statute~~ for a period longer than 120 days for sellers to obtain the necessary information.

4) Additional revisions made to Section 317.D.2. included the following.

2. If the seller obtains the information described in subsection D.1 of this section, the member state shall ~~provide the seller will be relieved~~ the seller of any liability for the tax on the transaction unless it ~~is~~ was discovered through the audit process that the seller had knowledge, or had reason to know, at the time such information was provided, that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The state must establish that the seller had knowledge, or had reason to know, at the time the information was provided, that the information was materially false.

Motion was made by Russ Brubaker, WA and seconded by Bill Riesenberger, OH to approve the proposed amendment with the changes made during the call to be forwarded to the Governing Board for consideration during the December meeting. A roll call vote was taken. 26 Yeas, 0 nays, 1 abstain, 1 absent

**RI09012 – Mr. Tilton – breakfast cereals and breakfast bars**

Sherry Harrell began the discussion by explaining the assignment to SLAC. SLAC will provide information and a recommendation for response to CRIC regarding Mr. James Tilton’s request for interpretation concerning whether breakfast cereals and breakfast bars are candy. CRIC will take the information under advisement and issue an interpretation. The 60-day comment period for this request began on August 27, 2009.

Mr. James Tilton participated in the call and explained his 2 requests for interpretation RI09010 and RI09012.

Sherry Harrell explained that only RI09012 concerning whether breakfast cereals and breakfast bars are candy was assigned to SLAC. RI09010 was not assigned to SLAC by

CRIC. RI09010 asks whether Lucky Charms is candy if Lucky Charms has multiple, distinct and identifiable products and one of the products is marshmallows (candy).

Public comments, MC09011, were received from Lee Anderson, General Mills. Mr. Anderson provided comments consistent with his written public comments and reiterated the interpretation should be that breakfast cereals and breakfast bars are not candy.

Sherry Harrell, TN explained that Judy Niccum, MN, Vicki Gibbons, WI and she had worked on the 1<sup>st</sup> draft of an issue paper, IP09002. Sherry Harrell explained that the paper focuses only on the question asked in the interpretation request. SLAC will be starting a food rules group to draft a rule to address questions regarding certain types of products and how they fit within the food definition categories. SLAC will begin with a rule for the candy definition.

Vicki Gibbons, WI and Judy Niccum, MN explained the paper. They explained it was not contemplated that the candy definition would be applied to food products not commonly understood and considered to be candy.

Scott Peterson reminded everyone of earlier discussions when Streamlined was crafting the definition of candy and how a person walking down the candy aisle in the grocery store could look at the label of a product to determine if the item was candy or food.

Several states indicated the paper should contain more analysis based on the current definition of candy including the two interpretive opinions adopted by the Governing Board. In addition several states felt a more correct analysis of the application of the candy definition to breakfast cereals should include a finding that breakfast cereals are not sold in the form of bars, drops or pieces.

Sherry Harrell continued the teleconference to October 27<sup>th</sup>. She indicated revisions would be made to the issue paper and the members should expect to take a vote on the interpretation during call on the 27<sup>th</sup>. Loren Chumley's request would also be discussed then.