



SST State and Local Advisory Council

Meeting Minutes

November 16, 2009 – Teleconference

Steering Committee

Sherry Harrell opened the teleconference/webinar meeting. She went through some revisions to agenda for the teleconference.

Sherry Harrell
Chair
Tennessee

Revised Agenda:

Christie Comanita
Arizona

1) Sales tax holidays - AM09006 - Vermont
2) Computer software maintenance contract definition - AM09011 - Tennessee
3) Filing returns and making remittances - AM09016 – The amendment refers to when due dates fall on holidays and weekend days.

Richard Dobson
Kentucky

4) State level administration - AM09019 - The amendment does not refer to refunds as previously indicated in the notice.

Cathy Wicks
Minnesota

5) Audit overpayments - AM09020 - This amendment does not refer to state level administration as previously indicated in the notice.

Craig Rook
New Jersey

The following items were removed from the agenda.

Vicki Gibbons
Wisconsin

1) Filing amendments - AM09015 – The Executive Committee took this amendment under consideration and voted not to recommend. They will bring the item before the Governing Board with the Executive Committee's recommendation not to adopt.

Mike Bailey
GFOA
City of Renton, WA

2) Exemption certificates and good faith - AM09017 – The amendment was referred to SLAC during the May Governing Board meeting. SLAC was already working on an amendment. October 15, 2009 SLAC voted to approve a revised amendment to Section 317. SLAC's amendment AM09017A01 replaces AM09017. SLAC does not need to take any further action.

Sonny Brasfield
NACO

3) Membership in the Agreement - AM09021 - This amendment does not refer to audit overpayments as previously indicated in the notice. This amendment was taken under consideration and approved on first vote by the Governing Board during the annual meeting of the Governing Board in Oklahoma City. A second vote is expected to be taken during the December Governing Board meeting.

Welcome and Introduction

Roll was taken. Twenty-five delegates were present. AR, AK, IL, IN, IA, KY, MA, MI, MN, NE, NJ, NM, NC, ND, OH, OK, SD, TN, TX, VT, VA, WA, WI, GFOA – 1, NLC - 1

AM09006 – Section 322: Sales Tax Holidays

Vermont proposed the amendment, AM09006. Susan Mesner, VT explained the amendment changes the definition of layaway sales. Under the proposal, a layaway sale qualifies for the sales tax holiday if final payment is received during the holiday AND either the item is delivered during the sales tax holiday or arrangements for delivery are made during the sales tax holiday. Susan described the issue as primarily coming from furniture dealers in Vermont during Vermont's last sales tax holiday. Several states indicated the amendment creates issues for them because they require sellers to report tax when the transaction is entered into (accrual method). Other states indicated sellers are not required to report tax until transaction is paid in full (cash method). Susan Mesner, VT stated she would like the

amendment tabled so that she can review the states' comments and consider whether Vermont would like to withdraw the amendment AM09006.

AM09011 – Computer Software Maintenance Contract

Tennessee proposed the amendment, AM09011. Sherry Harrell, TN explained the current definition of computer software maintenance contracts applies only to the retail seller of the computer software. Specifically, the definition provides contracts that “obligates a vendor of computer software” are included in the defined category. Tennessee believes third party providers of maintenance and support are not covered by the definition. Tennessee’s proposal is made in such a way that states would not be required to change laws. The amendment to the definition is intended to give states an option.

Vicki Gibbons, indicated Wisconsin changed its statutes to include third-party provider because they believed they were not included in the definition. None of the states objected to adding language to allow for an option to include third-party providers but thought the language needed some revision. Mark Nebergall, SOFTEC suggested the following,

“A member state may include within its definition of “computer software maintenance contracts” contracts sold by a person other than the vendor of the computer software to which the contract relates.”

Sherry Harrell, TN said she agreed with the suggestion and would make the change. The amendment will be included in the agenda for the next SLAC meeting.

AM09016 – Section 3XX: Due Dates for Returns, Remittances, and Documents Section 319: Uniform Rules for Remittances of Funds

Wisconsin filed the amendment for BAC. Meredith Garwood, TimeWarner and Mark Nebergall, SOFTEC explained the amendment. The amendment provides states must allow taxpayers to file returns and other documents timely with the state on the next succeeding business day when the due date falls on a federal holiday, state holiday, banking holiday or a weekend. The amendment would also expand the due date language currently in the SSUTA for remittances beyond just legal banking holidays. The amendment would also apply to filing documents with the Governing Board.

Some states objected to the Governing Board controlling due dates in states. Several states indicated they have differing holidays and this would create problems. Some states also believed provisions related to filing documents with the Governing Board should not be included in this section and should be put elsewhere in the rules or bylaws. Meredith Garwood, TimeWarner indicated the BAC would take the comments of the states under advisement and consider making revisions to the amendment.

AM09019 – Section 301: State Level Administration

Wisconsin filed the amendment for the BAC. Sherry Harrell, TN indicated the amendment would require states or the state level authority to conduct audits of sellers and would prevent local jurisdictions from auditing taxpayers. Currently the Agreement only prevents local jurisdictions from auditing taxpayers registered under the Agreement which means taxpayers registering in the member states through the Streamlined Central Registration System. Alabama, Arizona and Louisiana and those states' local jurisdictions have issues with this amendment. Sherry indicated she has talked to Fred Nicely, COST and Sonny Brasfield, National Association of Counties. She has asked Fred and Sonny to discuss the amendment. A call will be scheduled with affected states, local government representatives and Fred Nicely, COST.

AM09020 – Section 3XX: Netting Tax Due on Audits

Wisconsin filed the amendment for the BAC. Bruce Christensen, SD volunteered to chair the workgroup to work on the amendment. It was suggested a survey should be done to see what states currently do regarding audit overpayments. Do states net overpayments on sales tax against under payments for use tax on the taxpayer's purchases? Do states net overpayments in sales and use tax against under payments in other taxes or visa versa?

Several states expressed concern over the amendment. States discussed timing issues. Wisconsin indicated if audit is near completion and a refund is requested, Wisconsin will complete the audit and handle the refund separately. Minnesota indicated if a seller overcharges sales tax and underpays use tax, Minnesota will not allow credit for the overcharged sales tax. Minnesota would consider such netting to be undue enrichment. Texas indicated using one tax to offset another tax will cause issues when a refund is granted and the taxpayer is subsequently audited. The taxpayer will want an offset of tax that was previously refunded. States also objected, saying what does this amendment have to do with remote sellers collecting tax under Streamlined?

Other Business

Sherry Harrell indicated 2 other amendments AM09014 Section 319: Uniform Rules for Remittance of Funds and AM09018 Section 3XX: Statute of Limitations for Refunds were also assigned to SLAC by the Governing Board during the Oklahoma City meeting. These amendments will be discussed at a future SLAC meeting.

Meeting adjourned.