



# SST State and Local Advisory Council

## MEETING MINUTES

**March 12 & March 17, 2010**

### Steering Committee

#### **Welcome and Introduction**

Jane Page  
Chair  
South Dakota

Jane Page, SLAC Chair (SD) opened the teleconference and introductions were made. 26 delegates were present on the March 12 roll call and 28 delegates on the March 17 roll call.

Sherry Harrell  
Vice-Chair  
Tennessee

The minutes from the September 2009 meeting in Oklahoma City were reviewed. A motion to approve minutes was made by Sherry Harrell (TN) and seconded by Richard Dobson (KY). All in favor per voice vote.

Mike Bailey  
GFOA  
City of Renton, WA

Jane announced the three new members to the Steering Committee, Peter McVay (RI), Vicki Gibbons (WI), and Mike Eschelbach (MI). She also mentioned it was the Streamlined's 10 year anniversary this month.

Christie Comanita  
Arizona

Mike Edwards  
NACO

#### **Discussion, Recommendations, and Votes:**

Mike Eschelbach  
Michigan

1. Sales Tax Holidays, AM09006 proposed by VT  
This amendment was discussed during the Nov 16, 2009, SLAC teleconference. On February 5, 2010, Susan Mesner (VT) notified Scott Peterson and the Governing Board that Vermont wished to withdraw this amendment.

Vicki Gibbons  
Wisconsin

Peter McVay  
Rhode Island

2. Sourcing Services Rules 311.1 and 311.2 (SL 10001A01 and 10002A02)  
Bill Riesenberger (OH) explained that rules were drafted to determine where services are received. Two rules are ready to be sent to the Governing Board. 311.1 is sourcing services generally and 311.2 is sourcing of services performed on tangible personal property. A separate rule is being drafted for services with respect to tangible personal property.

William Riesenberger  
Ohio

Both rules were reviewed using changes suggested by the BAC. Additional modifications were made to the first paragraph. In rule 311.2 Mike Eschelbach (MI) suggested language refer to "some" veterinary services and also that the sourcing be referred to as "services performed on" tangible personal property instead of "services to" tangible personal property.

Blane Braunberger (ND) had a question concerning the tax that applies to items used in providing the service. Will ND still be able to tax the inputs used in those services if the service is sourced to SD? ND does not tax the service, only the tangible personal property used in the service. If ND repaired an item that is then shipped to SD (where the service is taxable) SD would allow a credit for the ND tax paid.

Moved by Bill Riesenberger (OH), seconded by Sherry Harrell (TN), to recommend Rule 311.1 and Rule 311.2 be advanced to the Governing Board.

Consensus: Yeas 25, Nays 0, Abstain 2.

3. Computer Software Maintenance Contracts SL10004 (AM09011)

Sherry Harrell (TN) explained that the proposed amendment to the definition of computer software maintenance contracts provides that a state may include within that definition contracts sold by vendors other than the software vendor.

Moved by Mike Eschelbach (MI), second by Sherry Harrell (TN), to recommend this amendment be advanced to the Governing Board.

Consensus: Yeas 25, Nays 0, Abstain 0.

4. Due dates for returns, remittances, and documents, SL10009 (AM09016), and Rule 806.1.4, SL10010. Both the rule and the amendment were discussed together and then a separate vote was taken on each.

Fred Nicely (COST) explained the amendment is to provide uniform treatment of due dates. If a due date falls on a weekend, federal holiday, legal holiday or state holiday in a member state, the return or remittance is due to the state on the next succeeding business day.

Rule 806.1.4 applies the same due date requirement for documents filed with the Governing Board, committee of the Governing Board, and the State and Local Advisory Council.

States would provide the Governing Board with their Legal Holidays which would be posted to STT website. It was mentioned that any extensions allowed due to disasters also be posted to the STT website. This was not agreed to by the states since states currently put that information as needed on their websites.

Bruce Johnson (UT) asked Scott Peterson SSTGB if similar guidance was needed for the Governing Board for Governing Board deadlines such as notices. Scott Peterson indicated he had been included in the discussion on the amendment and rule and did not think so but would take a second look.

Moved by Bill Riesenberger (OH), seconded by Sherry Harrell (TN) to recommend amendment SL10009 be advanced to the Governing Board.

Consensus: Yeas 25, Nays 0, Abstain 0.

Moved by Bill Riesenberger (OH) and seconded by Russ Brubaker (WA) to recommend Rule 806.1.4, SL10010 be advanced to the Governing Board.

Consensus: Yeas 26, Nays 0, Abstain 0.

5. Interpretation Sales Price Definition SL10013

Loren Chumley (KPMG) provided additional information concerning the employee sales price interpretation request that was forwarded from the Governing Board and CRIC to SLAC.

Sherry Harrell (TN) explained that there are two options in SL10013 written for states to review and determine which would be recommended to CRIC and the Governing board for the interpretation. These are options - no decision has been made.

Option 1 is the original CRIC interpretation that all employee points redeemed for employee discounts do not constitute consideration. Employee points redeemed to reduce the purchase price of the TPP are discounts in the sales price.

Option 2 interprets the redeemed employee points to be discounts only if they cannot be redeemed for cash. Points that are eligible to be redeemed for cash are interpreted as consideration for the sales price. Vicki Gibbons (WI) discussed possible revisions to

option 2 to remove the references to "employee discount". It was also decided to edit the option to state that the points that cannot be redeemed for cash would not be included in sales price.

Ellen Thompson (NE) explained that a third option should be provided. The third option should be that all redeemed employee points are consideration whether or not the cash option is allowed. The reason is that the points are performance based. Meaning a service is provided to receive the points which allow for a lower price. Ellen also suggested that "consideration" be defined since it varies state by state.

There was discussion regarding: 1) if use tax applies to the value (purchase price) of the product when the points reduce the sales price to 0, and 2) if the points reduce the sales price by a dollar amount is use tax due on the difference. The use tax issue is not part of the interpretation request so will not be addressed. At this time the use tax interpretation is for each state to decide.

Ellen Thompson (NE) referred to 1970 IRS Rule 70-331 where prize points redeemable for merchandise were included in wages subject to income tax. Per Loren Chumley (KPMG) the client had indicated they had researched and the points exchanged for TPP were not included in wages on W-2.

Robin Corrigan (TX) stated in TX if the points are redeemed the total price listed is taxed; the points are treated as cash. A discount is when a seller offers a discount and the purchaser does not need to provide any services to receive it.

#### Other comments

Some states believe if the value of the points cannot be used elsewhere the points have no value.

If there is a different price for employees than for public, that is an employee discount and such a discount is not included in the sales price.

If there are points awarded based on performance, and the points are exchanged for a reduced or lower price, that is consideration and taxed.

Scott Peterson (STTP) stated that an answer is required, and soon. It is not acceptable for states to have varying interpretations of a definition in the Agreement.

The third option will be added and the discussion will continue on another SLAC call.

#### 6. Administration of Exemptions SL10011, AM09023

Sherry Harrell (TN) explained the addition of Sections G & H to this amendment.

AM09023 is a new amendment for Section 317 of the SSUTA and is only the addition of Section G, which requires states to post the STT exemption certificate on a state's website by July 31, 2010, and Section H, which allows a state to use other exemption forms, but the form may not require more data than required on the STT exemption certificate.

Richard Dobson (KY) stated Section H needs to be discussed further as some states still have other certificates that vendors have on file. Those certificates contain data beyond what is required by STT. If audited the additional data on those certificates may lead to assessments. Does that create issues? Most states agreed that if an old certificate is on file it is still acceptable. However, some states are requiring the STT exemption certificate be completed or they disallow the exemption. Some states are still requiring data beyond what is allowed on the SST exemption certificate. If the seller and buyer use an old form and it is not fully completed KY is holding them liable even if the data required on that state form is more than allowed by STT.

Due to time constraints the chair held this amendment until March 17 for further discussion.  
During the March 17 discussion it was decided to move only Section G and continue to discuss Section H.

Moved by Sherry Harrell (TN) and seconded by Richard Dobson (KY) to recommend Section G of SL10011 be advanced to the Governing Board.  
Consensus: 21 Yeas, 0 Nays, 0 Absent

### **Review of Work Groups**

SLAC has set up four new work groups. Goal is to have rule or amendment ready for the summer SLAC meeting in order to be noticed in time for the fall Governing Board meeting.

Food Definition Rules, Craig Johnson (WI) and Judy Niccum (MN). This new group is to draft rules to interpret definition of Candy, Soft drinks, Dietary Supplements, and Food. A strict reading of the candy definition includes many products that were probably not intended to be candy. A survey was sent out to find out how states tax candy. A teleconference will be scheduled for March 25 or 26. Scott Peterson (STT) recommended the non SST states that use this definition be included in the discussions.

Uniform Remittance of Funds, Larry Paxton (IA), Tom Atchley (AR) AM09014. States that require additional remittances will be contacted for the committee. Teleconference will be scheduled for the last week of March.

Audit Overpayments, Bruce Christensen (SD). AM09020  
Jane explained Bruce was discussing this amendment at the Audit Committee meeting in Indianapolis and that he will be sending information to all states.  
During the March 17<sup>th</sup> call Bruce explained that the Audit committee met last week and discussed this amendment. A teleconference will be held on March 24, at 10am to discuss with the business community what this amendment is trying to address.

Sales Price, Cathy Wicks (MN), Jody Bartels (SD). Will discuss and draft rule to determine when taxes are included in the sales price - imposed on the customer or imposed on the retailer. Teleconference is scheduled for Thursday, March 18 at 10 am. Notice will be emailed after the meeting.

### **Other Items**

#### Tax Matrix

Richard Dobson explained that minor revisions were made to the matrix and that a few other items were questioned, but decisions had not yet been made.

Changes:

An effective date was added

Prescribed by was added to medical items paid or reimbursed by Medicare and Medicaid.

Intrastate, Interstate, and International Calling cards were combined into one line.

Intrastate, Interstate, and International Paging Service were combined into one line.

Intrastate, Interstate, and International wireless calling service were combined into one line.

Disaster Preparedness Supply items were added.

The form is not finalized and suggestions should be sent to Richard Dobson. It will be finalized in April as state's need to have the new form by June.

### One-Way Paging

Vicki Gibbons (WI) explained that Rule 327.2 explains how to use telecom definitions. States can use any definition to exempt or tax that specific service. Paging is defined, however, one way and two way paging is not separately defined. Four states have listed one-way paging in their laws, ND, MI, IA, WY. Perhaps this was done without understanding that two-way paging is available. This is creating confusion for phone companies.

Contacts will be made to the four states involved to determine if they will use the paging definition and tax or exempt all paging services, or if a definition of one-way and two-way paging is required.

State Administration of Exemptions AM9019 will be discussed on a future call.

Direct Pay Permits AM08013 will be discussed on a call after April 1. Jane said there is concern the Direct Pay Permit amendment is removing too much control from states as to who can use a direct pay permit.

Meeting adjourned.