



SST State and Local Advisory Council

MEETING MINUTES

April 29, 2010

Steering Committee

Jane Page
Chair
South Dakota

Sherry Harrell
Vice-Chair
Tennessee

Mike Bailey
GFOA
City of Renton, WA

Christie Comanita
Arizona

Mike Edwards
NACO

Mike Eschelbach
Michigan

Vicki Gibbons
Wisconsin

Peter McVay
Rhode Island

William Riesenberger
Ohio

Welcome and Introduction

Jane Page, SLAC Chair (SD) opened the teleconference and introductions were made. 23 delegates were present either in person or on the phone during the roll call, but others joined on the phone during the meeting.

The minutes from the October 15 & 27 and November 16, 2009, and March 12 & 17, 2010 SLAC conference call meetings were reviewed with no changes made. Mark Haskins (VA) moved to accept all of the minutes. All were in favor per voice vote.

Discussion, Recommendations, and Votes:

1. State Administration: Christie Comanita (AZ) introduced and explained both the WI version (SL10029) and the SD/TN version (SL10021) of this amendment. Both amendments expand the state level administration to purchasers as well as sellers and allow the state to authorize audits to be conducted by others on behalf of the states. It also sets out criteria that those conducting the audit must meet. The only difference between the two versions is that the WI version does not allow an auditor to be paid on a contingent fee basis while the SD/TN version does allow it.

Craig Johnson (WI) suggested adding “sales & use” in section B (1), so that it is specific to what type of tax this amendment applies, but Bill Riesenberger (OH) questioned adding the wording since it is understood. It was then suggested that “taxes covered by the agreement” be inserted in B (1) instead of “sales & use” tax. Sherry Harrell (TN) said this may be a problem since the draft version of the federal legislation says certain provisions apply to other taxes. It was then decided that “sales & use tax” be inserted, so that no other taxes will be impacted.

Val Pfeiffer (The Tax Coefficient) raised objections to allowing 3rd party audits because in Michigan 3rd party audits for property tax have resulted in frivolous assessments and there will be opposition if states pay on a contingency basis. Sonny Brasfield (National Assn of Counties) said states don't have to pay on a contingency basis, but Val stressed that it is critical that 3rd party auditors not be paid on a contingency basis. Sherry raised the concern about businesses submitting refund audits to the state prepared by auditors hired on a contingency fee bases. Val and Mike Wasser (State Tax Services) commented about the differences between government and business goals. Sonny said the agreement should not dictate how a state runs their business or business model.

Fred Nicely (COST) raised concerns about different language in Section A between the SD/TN and WI versions. Jane Page said it was her error and both versions of Section A should be identical, with the WI version being the correct one. She said she will correct it before the Governing Board meeting.

Ellen Thompson (NE) thought wording in B (3) was clunky and didn't make sense. The wording was revised to say.....unless there is fraud....

Bill Riesenberger moved the WI version that included the prohibition of contingency fees. Motion failed: No 25, Abstain 2.

Bill then moved the SD/TN version with all of the wording changes discussed. Motion passed: Yes 20, No 3, Abstain 2

Since a quorum was not present the vote was a consensus vote.

2. Sales Price and Employee Points request from Loren Chumley: Sherry Harrell reported that there was quite a bit of discussion from states at the workgroup meeting the day before and she wanted to know additional state's preference. The preference was as follows:

Option	1	2	3
	MA	AZ	AL
	NJ	IN	AR
	RI	MI	ME
	SD	TN	MN
	UT	VA	NE
		WA	ND
		WI	OH
		NAOC	TX
			WV
	5	8	9
	IA said either 1 or 2		

Sherry thought we should have added permissive language to allow employee discounts according to each state's law. Fred Nicely didn't think this was a good idea because employee discounts that apply to everyone should not be toggled.

Bruce Johnson (UT) suggested asking Loren Chumley to withdraw her request and Tom Gillaspie (NE) said SLAC should take it back to the Governing Board and let them know we can't come to a consensus on this and let them deal with it. Sherry said she would update the language and submit to the Governing Board.

3. One-Way Paging: There are four states that carve out one-way paging from the term paging. Michael Eschelbach (MI) explained that SLAC has written a report and determined that paging, as defined in the Agreement, includes both one-way and two-way paging. The report suggests that CRIC prepare an interpretation of paging specifying that paging includes both one-way and two-way paging and that pursuant to Section 327.2.D., partial exclusion of items within a telecommunication defined term is prohibited unless the SSUTA specifically permits such a variation. The four states have agreed to make the changes to their statutes/rules. John Cmelak (Verizon) said he supports the one-way paging report and so does the BAC communication sub-team.

Sherry Harrell (TN) moved that SL10020 One-Way Paging report and recommendation be approved. Passed unanimously on a voice vote.

4. Food Definition: Sherry Harrell (TN) discussed the work being done by the Food Definition work group co-chaired by Craig Johnson (WI) and Judy Niccum (MN). The workgroup is working on a rule to further address the definition of candy. Issues on the definition include:

- a. Should sugar be the first ingredient on the label
- b. Will trail mix be considered a loose mixture of ingredients
- c. Should we clarify that flour is considered to be made from grain since there are some foods ground into a fine powder similar to flour that aren't grain flour.
- d. Refrigeration
- e. Bundled transactions

The workgroup sent out a survey asking states to respond to a list of items and check if the state treats them as candy or food. Sherry Harrell said Mr. Tilton (Alex Lee Inc) has given feedback on this survey. The next workgroup meeting will be scheduled in May.

5. Direct Pay Permits: Bill Riesenberger (OH) explained that Ohio submitted amendment AM08013 to address direct pay permits in origin states. Section 310.1 of the Agreement places extra requirements on origin states, as related to direct pay permits, than on destination states. The purpose of the Ohio amendment was to create a uniform standard for both origin and destination states and hold the destination states to the same direct pay requirements as origin states.

Ellen Thompson (NE) submitted an amendment that is the reverse of AM08013, and brings the origin states under the same requirements as destination states in Section 326, which is less restrictive. Fred Nicely (COST) said the BAC is vehemently opposed to taking direct pay out of 310.1 because it would be a disruption to businesses. Fred said the requirements on origin states for direct pay purposes was part of the deal in allowing origin sourcing. There will be further workgroup meetings on this issue.

There were no further announcements or issues. Meeting was adjourned.

Review of Work Group Session, April 28, 2010

Certificate of Compliance: Jane Page (SD) asked for any comments or changes to the updated 2010 Certificate of Compliance. There were no further changes so it will be sent to Scott Peterson to finalize by June.

Tax Matrix: Jane Page asked for any comments or changes to the updated Taxability Matrix. There is confusion on paging services - should it be listed in each category for international, interstate and intrastate, or just in a category on its own. It was decided to leave it in a category on its own. This will be forwarded to Richard Dobson (KY) for review and then to Scott Peterson to finalize by June.

Sales Price, Cathy Wicks (MN), discussed the survey sent to states asking if they impose sales tax on specific federal taxes applied to goods and services. Very few states had responded, so she said it will be resent and asked the other states to please respond. Someone mentioned that the E911 federal tax is not really a federal tax, but is only a state tax. It was also mentioned that #2 in the survey (Telecommunications Federal Excise Tax) is the same as #10 (Communications Tax). Both items will be adjusted before resending. There was not much discussion on this issue. Cathy will draft a rule before the next meeting so everyone has something to review.

Audit Overpayments AM09020: Bruce Christensen (SD) provided an updated version of this amendment regarding netting overpayments when conducting an audit on purchases. The state is to net overpayments for penalty and interest. Bruce Johnson (UT) suggested the title be changed to "Computation of Penalty & Interest on Audits" for clarification. Sherry Harrell (TN) asked that a sentence be added to make sure a state does not have to offset over collected sales tax against consumer use tax.

Myles Vosberg (ND) said ND cannot refund tax to a purchaser; it must go back to the seller for a refund of sales tax and Bruce Johnson added that there is a concern about double refunding. If an overpayment is from sales tax and the state gives credit in the audit to the purchaser what will stop the purchaser from going back to the vendor and requesting a credit and the vendor applying to the state for a refund. In this circumstance the state would have credited the purchaser in the audit and refunded the vendor through a refund request.

Vicki Gibbons (WI) said they impose a negligence penalty on particular issues. She doesn't have a problem with the interest section of the amendment, but does for penalty. Sherry Harrell suggested that it be clear a state does not have to apply this amendment to any overpayment resulting from sellers charging sales tax. There will be further work sessions on this amendment.

Sourcing Services Rule 311.3: Bill Riesenberger (OH) explained that this rule is specifically on sourcing services with respect to tangible personal property. Sourcing services performed on tangible personal property is in rule 311.2, so is not part of 311.3. Bruce Johnson (UT) asked if a state has to divide the tax if the report is sent to more than one location. Bill said that has not yet been worked out. Sherry Harrell (TN) suggested having a separate rule when a report is sent to more than one location. Mark Nebergall (SFTEC) said there is a rule in 309 that could be used as an example. Vicki Gibbons (WI) raised a concern about the difference between inspections of TPP and monitoring of TPP. Vicki said she thinks they are closely aligned.

Bill said there will be further work sessions on this rule and they will also be working on sourcing of services to products delivered electronically.

Interpretation Sales Price Definition SL10013: Sherry Harrell (TN) discussed the survey that was sent to states asking them what option (1, 2 or 3) their state would use when determining if employee points given for job performance are consideration. Job performance means a service is provided to receive the points which allows for a lower price. These are just options; no decision has been made yet.

Option 1 interprets 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 not be consideration 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.

Option 3 interprets that all redeemed employee points are consideration whether or not the cash option is allowed.

Jane Page made a list of the options chosen by each state. This discussion was then held over to the SLAC meeting the following day.