



SST State and Local Advisory Council

MEETING MINUTES

July 22, 2010

Steering Committee

Welcome and Introductions

Jane Page
Chair
South Dakota

Jane Page, SLAC Chair (SD) opened the teleconference and roll was taken. Twenty two (22) states were present during the roll call but others joined during the meeting. Four business representatives introduced themselves as well. Since a quorum of states was not present, any votes taken would be consensus votes only.

Sherry Harrell
Vice-Chair
Tennessee

The minutes from the April 29th, 2010 meeting were reviewed with no changes made. Bill Riesenberger (OH) moved to accept the minutes. Dana Angell (WV) seconded the motion. All were in favor per a voice vote.

Mike Bailey
GFOA
City of Renton, WA

Local Communication Taxes

Christie Comanita
Arizona

Scott Peterson (SST) gave a summary of the Communication Taxes Taskforce meeting which was held July 19th & 20th, 2010 in Washington, DC. The purpose of the meeting was to identify the taxes on communications services which may be impacted if the SSUTA provisions were applied to such taxes. The meeting concluded with two primary assignments. Taxes on communications services will be analyzed in depth in the states of Oklahoma, Virginia, Washington, and Florida. In addition, a study will be initiated and funded to determine how current state and local statutes would be affected.

Mike Edwards
NACO

Mike Eschelbach
Michigan

Vicki Gibbons
Wisconsin

Discussion, Recommendations, and Votes on proposed SSUTA Amendments

Peter McVay
Rhode Island

AM10004 – Ringtones Jack Mansun (MN) explained the amendment as creating a toggle for ringtones outside of the “digital audio works” definition. Minnesota taxes only ringtones and no other forms of digital audio works. Jack explained the taxation of ringtones in Minnesota predates the adoption of the telecommunications and digital products definitions in the Streamlined Agreement. They have tried to take care of the issue in the last two legislative sessions but have not had success.

William Riesenberger
Ohio

Richard Dobson (KY) asked if the issue would likely be resolved in the next Legislative session. Jack was not sure as the State would have a new governor by then. Sherry Harrell (TN) asked how Minnesota taxes a song which is downloaded as a ringtone. Judy Niccum (MN) explained the song would not be taxed, even if it could be shown the customer later used the song as a ringtone. Bill Riesenberger (OH) inquired as to the fiscal impact of this issue. Jack indicated ringtones generate approximately \$400,000 in revenue annually.

Vicki Gibbons (WI) asked how a seller would know if a song were being downloaded to a phone device as a ringtone. She indicated that the definition of “digital audio works” may need amending to clarify this issue. Judy Niccum (MN) responded that Minnesota taxes the sale of products marketed as “ringtones” regardless of whether the customer actually downloads it to a phone since the seller has no control over that.

Bill Riesenberger (OH) suggested adding a “grandfather” provision since a definition of “ringtones” existed for states that imposed tax on them prior to when they were defined as “digital audio works” in the Agreement.

Mark Nebergall (Softec) indicated Verizon could not be on the call but that they were opposed to the amendment. Mark indicated no other state has asked for this toggle.

Richard Dobson (KY) expressed concern that if a grandfather provision is allowed for ringtones, other states may want the same treatment for other products within defined terms. Russ Brubaker (WA) asked if businesses saw any difficulty in administering a toggle for ringtones. No businesses responded to this question.

Dale Vettel (MI) moved to approve the amendment. Sherry Harrell (TN) seconded the motion. The vote was: 15 states voting “Yes”; 6 states noting “No”, and 7 abstentions.

AM09014 – Additional Payments Larry Paxton (IA) explained the amendment was proposed by the BAC and sponsored by Wisconsin. The amendment puts limits on semi-monthly payment requirements under Section 319 of the Agreement and expands the provisions to cover purchasers remitting more than \$30,000. Larry indicated more work was needed on the amendment and that it was not ready for a vote.

Dale Vettel (MI) commented that this is a big issue for Michigan from a financial and systems perspective. He continues to work with the BAC on various provisions of the amendment.

Susan Mesner (VT) asked whether the amendment required only systems changes or would regulations have to be changed as well. Jane Page (SD) responded that statutes and regulations might need to be amended only if a state requires additional payments per return.

Richard Dobson (KY) commented that we may be creating a barrier for states to join with these additional payment requirements. He suggested the requirement in section A(b)(iii) of the SLAC version should be optional and not a mandate. Dale Vettel (MI) indicated he will continue to work on this language. He indicated it may only be a concern for Michigan and Arkansas but that he may need to hear from other states not currently affected by the additional payment language.

AM08013 Direct Pay

Bill Riesenberger (OH) provided a brief history of the amendment (SL10040) stating it was intended to make the direct pay provisions uniform between origin and destination states. However, after several workgroups calls on the issue, he was not seeing much support for the amendment and was willing to withdraw it. SLAC had drafted its own amendment (SL10039) which would remove all specific direct pay language from Section 310.1 and would make origin states administer direct payment permits the same as destination states, with only the addition of a 120 day approval timeframe.

Jane Page (SD) indicated there was a third Direct Pay amendment (SL10028A01) which contained technical corrections only to Sections 309 and 310.1.

Bill Riesenberger (OH) moved that both SL10039 and SL10040 be withdrawn. Sherry Harrell (TN) seconded the motion. The motion passed on a voice vote.

Bill Riesenberger (OH) moved SL10028A01 for approval. Sherry Harrell (TN) seconded the motion. The motion passed with 23 voting “Yes” and no votes in opposition.

AM09018 Statues of Limitations for Refunds

Richard Cram (KS) began the discussion stating that the Kansas Legislature had shortened the refund period to one year in 2009 (while the assessment period remains 3 years) in response to a revenue shortfall. Kansas does not view the refund time period as a uniformity issue and opposes the amendment.

Dale Busaker (Grant Thornton) stated that having a shorter statute for refunds than for assessments is a violation of the Agreement. Dale commented that states should use other methods to address revenue shortfalls and that having different time periods for assessments and refunds does not improve sales and use tax administration. Dale also stated that having different time periods for incentive refunds could be considered with this amendment.

Dale Vettel (MI) stated that Michigan has a four year statute for both refunds and assessment but there is a difference as to when the statute begins to run. Dale has concerns with the current draft of the amendment. Jane Page (SD) commented that it was not clear if incentive programs were excluded and that they should not be included in the amendment.

Sherry Harrell (TN) stated Tennessee's general assessment and refund period for sales and use tax is the same. However, in at least 2 situations the Tennessee General Assembly had limited a refund period to 12 months where Tennessee courts had determined that sales and use taxation of a particular product was beyond the scope of the statute. In at least one of those situations, the General Assembly then adopted changes to the statute to impose sales tax on the particular product.

Russ Brubaker (WA) asked how having different periods for refunds is contrary to the Agreement. Dale Busaker (Grant Thornton) stated that he did not mean to say it was prohibited by the Agreement, but that having different refund and assessment periods is not equitable.

Ellen Thompson (NE) commented that the issue of purchaser refunds has little to do with the collection of sales tax by sellers.

Richard Dobson (KY) stated this issue is not within the scope of the Agreement and that Kansas is not out-of-compliance today. Tom Gillaspie (NE) commented he does not see a violation of the Agreement by Kansas. Richard Cram (KS) stated Kansas issued a Revenue Ruling in 2009 which permitted a refund to be used to offset an assessment but only up to the amount of the assessment.

The discussion concluded without a vote and agreement that more discussion will follow.

AM10007 Election for Origin-Based Sourcing

Mark Haskins (VA) explained the amendment to Section 310.1 will allow certain types of leases (those for less than 14 days) to be sourced to origin. Mark has contacted numerous associations and group to solicit input and to work with members of the rental and leasing industry but has not received much response from them. While this continues to be an issue for the rental industry, Mark is recommending this amendment be withdrawn at this time. He said it was a solution in search of a problem, and without the industry's input there did not seem to be a problem.

Bill Riesenberger (OH) moved for withdrawal of AM10007. Mark Haskins (VA) seconded the motion. The motion passed on a voice vote, although Texas voted against it.

Report of Workgroups

Sourcing of Services Bill Riesenberger (OH) explained that work continues on Rule 311.3, Sourcing of Services with Respect to TPP, such as monitoring services. He said determining where the service is received has created some concerns. The workgroup will also start to discuss the sourcing of electronic products and services to mobile property.

Credit Issues Greg Potegal (WA) explained the workgroup is focusing on rules so that purchasers are not faced with situations where two states are claiming tax on the same transaction. He indicated there should be a priority established between the states. Greg further explained that an Interpleader process is being suggested where the purchaser can go to the Governing Board for a determination as to where the tax is due. Money could be deposited with the Governing Board; then released to the appropriate state once it is determined where the tax is due.

Greg explained that states are having concerns with allowing credit against local tax due for state tax paid. He indicated the states will be surveyed to see if state statutes would need to be changed if the current proposal is adopted, and it is important that he get the surveys back in a timely manner in order to proceed.

Healthy Foods Dana Angell (WV) said the workgroup is making good progress in identifying and defining foods that would be affected by the new definition. She does not envision a lengthy list of products that would qualify as “healthy foods” and does not intend for any particular brands of the products to be included or excluded. The workgroup has received input from various sources as to food products covered by the Federal WIC program. The workgroup will continue to research certain products for possible inclusion in the proposed definition.

Candy Craig Johnson explained that the workgroup was drafting a rule for Section 327.6 for the definition of “candy”. Craig indicated states differ in their application of candy. Some states apply the definition by looking just at the ingredients labeling while other states suggest looking at the product and if the product is thought of as candy looking at the ingredients label to determine if the product is a product that has been excluded from the category of candy. When looking at just the ingredients without considering whether the product is thought of as candy causes some “food” items to fall within the “candy” definition. The rule for 327.6 will address how the candy definition will be used. Once the rule on candy is complete, the workgroup will draft rules for soft drinks and dietary supplements.

Substantial Compliance Dale Vettel (MI) explained that two workgroup meetings have been held. The draft rule contains provisions that policies must be written and the policies cannot impose a burden on sellers that is more than de minimis. However, Dale indicated that states are having concerns over the “written policy” provisions and that examples from previous CRIC compliance reviews will be added to the rule.

Sales Price Jane Page (SD) explained that a draft rule is being developed to clarify what is meant by the phrase “all taxes imposed on the seller”, which is part of the “sales price” definition.

Jane Page (SD) announced that Representative Delahunt of Massachusetts, sponsor of the House version of the federal Main Street Fairness Act, will hold a press conference on the bill at 10:00AM Eastern time on July 29, 2010. She indicated South Dakota Governor Rounds will be in attendance.

The meeting was adjourned.