



SST State and Local Advisory Council

SLAC MEETING MINUTES August 26, 2010

Welcome and Introductions

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

Jane Page, SLAC Chair (SD) opened the teleconference and roll was taken. Thirty states (30) and the GFOA representative were present on the call. Several business representatives were also present.

The minutes from the July 22, 2010 meeting were reviewed. Ellen Thompson (NE) suggested that a section in the discussion on candy was unclear and should be revised. With the section clarified, Mike Eschelbach (MI) moved to approve the amended minutes. Dana Angell (WV) seconded the motion. The amended minutes were approved with a unanimous vote.

AM09018 Statute of Limitations for Refunds

Jack Mansun (MN) announced that Minnesota intends to withdraw amendment AM09018, Statute of Limitation on Refund, at the upcoming Governing Board meeting. Dale Busaker (Grant Thornton) thanked the states for their consideration of the issue.

Discussion, Recommendations, and Votes on proposed SSUTA Amendments and Rules

AM09014 – Additional Payments

Larry Paxton (IA) reviewed the updated version of the amendment to Section 319. Judy Niccum (MN) suggested the addition of provisions which would allow states to assess interest and penalties for failure to timely file a return or pay the tax due. Larry Paxton (IA) suggested a time period of 20 or 21 days for the taxpayer to request a refund of an overpayment before the state would apply the overpayment to the next tax period.

Richard Dobson (KY) expressed concerns with the programming requirements his state may encounter when applying the overpayments. Kathy Neggers (GE) asked for clarification that returns would not be required with the additional payments. Mike Eschelbach (MI) commented that taxpayers won't know if there's been an overpayment with the additional remittance until the return is filed at the end of the reporting period. Any credit balance could continue to roll forward.

Fred Nicely (COST) commented that states should be notifying taxpayers of an overpayment.

Tony Mastin (OK) indicated that Oklahoma will have to do a manual adjustment to allow the overpayment to be credited to the next reporting period. Oklahoma, which has accelerated payments, currently refunds overpayments directly. Tony suggested the requirement to apply overpayments to the next reporting period be amended to an option. Richard Cram (KS) commented that Kansas generates credit memo and asks that the

taxpayer request a refund. Kansas also prefers the state be given the option to apply overpayments to the next reporting period.

Kathy Neggens (GE) commented that states or taxpayers could take no action until the return for the period is filed.

Cathy Wicks (MN) expressed concerns on which rules will apply for states requiring only one additional payment.

Jane Page, SLAC chair, asked the Iowa representatives to rewrite the section on applying an overpayment resulting from an additional payment and report back to the committee at the end of the call.

SL10044 Substantial Compliance Rule

Mike Eschelbach (MI) gave the background on the development of the rule. He commented that businesses and states disagree on whether the Certificate of Compliance constitutes a “written policy”. The BAC has submitted written comments on the proposed rule. Mike indicated the workgroup drafting the rule believes the rule is warranted in order to provide clarity to the phrase “substantial compliance”.

Fred Nicely (COST) comment that state laws should be identical as possible and that this rule allows delays in informing states of their compliance issues. Fred reiterated the concern that the Certificate of Compliance should not be used as a written policy.

Russ Brubaker (WA) questioned the difference between the Certificate of Compliance and any other policy published on the Web site. Sherry Harrell (TN) commented there is very little on the checklist that isn’t in statute. Tony Mastin (OK) commented that when a state doesn’t have a written policy, the state indicates on the checklist how it is administered.

Jeff Hyde (GE Capital) questioned the objective of the rule. Jeff commented that concluding a state is in compliance by completing the Certificate of Compliance is a big leap. Fred Nicely (COST) questioned whether the state Attorney General is willing to say the checklist is binding on the state.

Russ Brubaker (WA) indicated the Attorney General is an advisory to the Revenue Department and the Department can rely on the advice or not rely on it. Mike Eschelbach (MI) stated that only courts decide what is binding on the Department. Scott Peterson (SST) commented that it’s a stretch to say the Tax Commission of a state would complete the checklist with an intentional misrepresentation. In fact, several states have notified the Governing Board of compliance issues when submitting the Certificate of Compliance.

Victoria Daniels (IA) would like to see the rule adopted. She wants something that will tell a state what is considered “substantial compliance”. Mike Eschelbach (MI) commented that the Certificate itself does not conclude compliance. The accompanying letter to the Governing Board makes a declaration the Certificate is true and complete. Vicki Gibbons (WI) supports the rule and commented it is too burdensome to have all the requirements in the Agreement in a statute or regulation. Tony Mastin (OK) commented that not all the requirements of the Agreement are in Oklahoma’s statutes. For example, Oklahoma does

not have any statutory provisions for caps or thresholds. However, the response on the checklist indicates the Department's administrative policy. Tony believes CRIC does a thorough review of each state's compliance and a rule may not be needed.

Mark Nebergall (Softec) commented that BAC fears the rule waters down the compliance standard. Myles Vosberg (ND) commented that in last year's compliance review, several states were asked to provide a written statement on their Web site to publicize a position.

Mike Eschelbach moved that the committee vote on SL10044. Richard Dobson seconded the motion. Cathy Wicks(MN) offered a substitute motion to defer the pending motion until a later SLAC meeting. Anita DeGumbia (GA) seconded the motion. The vote on the substitute motion was: 26 voting "Yes" (23 states and the GFOA); 3 states voting "No", and 2 abstentions. Therefore, a vote on the rule will be delayed until further notice and the workgroup was asked to set up another conference call.

AM09014 – Additional Payment (discussion resumed)

Larry Paxton (IA) indicated he has drafted substitute language for one section of the amendment. Jane Page (SD) stated she would not adjourn this meeting but would reconvene on Monday, August 30, so that states would have a chance to review the new language before a vote is taken.

Report of Workgroups

Candy Definition Craig Johnson (WI) gave an update on the drafting of the rule by the workgroup. The goal is to write rules without having to make any changes to the Agreement. Craig stated the intent of the candy definition was to differentiate between products commonly understood to be candy and products that are cookies. The literal reading of the candy definition resulted in products such as beef jerky and potato chips being classified as candy. The rule will contain a two step process. First, a product must be commonly considered as "candy". Second, each requirement of the candy definition must be met.

In addition to the rule, an appendix will list certain products and indicate whether the item is "candy" and the reasoning for the classification. The list will not be all inclusive but will provide guidance when reviewing products.

The rule on candy will be on the SLAC agenda in October in Indianapolis.

Credit Issues Greg Potegal (WA) commented that the workgroup continues to meet and is working on a new section to the Agreement that will provide rules for granting of credits to purchasers for taxes paid to other states and local jurisdictions. The big concern relates to whether states without local taxes will be required to grant credit for local taxes paid in other states.

A white paper will be drafted by the workgroup to provide the background on this issue. The next workgroup call is scheduled for September 15th.

Sourcing of Services with Respect to TPP Bill Riesenberger (OH) provided an update on the work being done on a rule to address the sourcing of services with respect to TPP, such as inspection and monitoring services. The workgroup is surveying states as to the type of services taxed. The portion of the rule that is moving forward will address monitoring services which may take place in more than one location.

Bill Riesenberger announced that he will be retiring effective September 1, 2010. The SLAC delegates thanked Bill for his years of hard work.

Sales Price Cathy Wicks (MN) commented that a rule is being drafted covering the section within the “Sales Price” definition stating “all taxes imposed on the seller” are within the definition. The BAC would like to see such taxes in the Taxability Matrix of each state. However, Cathy is not certain this is feasible.

The SLAC chair then recessed the meeting until August 30, 2010 at 10:30 AM (central time).

August 30, 2010

Jane Page, SLAC Chair (SD) reconvened the meeting from August 26, 2010. Nineteen states (19) and the GFOA representative were on the call. Several business representatives were also present.

Continued Discussion, Recommendation, and Votes on proposed AM09014 – Additional Payments

Jane Page (SD) provided a brief review of the updated language to AM09014.

Richard Cram (KS) expressed concern that the wording did not clearly indicate only overpayments as a result of an additional payment were affected. The deadline for refunding an overpayment within 21 days may also be a problem for his state. He also stating putting the 10 day request time period and 21 day payment period may be difficult to get into statute.

Denise Lambert-Harding (NJ) commented that New Jersey would be required to make a lot of systems changes with this amendment. Mike Eschelbach (MI) indicated that Michigan doesn't automatically do anything with an overpayment. Michigan does whatever the retailer requests with the overpayment.

Scott Peterson (SST) asked if New Jersey would allow a seller to short-pay the next return. New Jersey responded it would refund the overpayment if the taxpayer made a request.

Richard Dobson (KY) commented that the 21 day refund requirement is too short. Richard stated the requirement placed a burden on states with additional programming costs. Eric Wayne (NC) commented that North Carolina has a manual process for handling overpayments and doesn't send out notices of overpayment. Eric also stated the 21 day timeframe may be too short if a state has trouble getting all the returns processed.

Tom Atchley (AR) commented that the mailing date (postmark date) is considered the filing date and that some mail isn't received by the Department for 5 days. This would cut into the 21 day timeframe.

Sherry Harrell (TN) commented that sellers should be aware if there is an overpayment from a previous month. Frank Julian (Macy's) commented that sellers should not be in a constant overpayment situation.

Tom Conley (IN) asked how long a state would have to actually make the payment if a refund were requested. Ellen Thompson (NE) asked if states with accelerated payments would need to create two separate processing systems – one for accelerated taxpayers and one for all others. Ellen also questioned whether states would be allowed to use the overpayment to satisfy liabilities from other tax programs. From the general responses it was noted that states varied on whether overpayments of sales tax could be used to satisfy a balance due in another program.

Frank Julian (Macy's) stated he wants uniformity in how overpayments from additional payments are handled. Kathy Neggens (GE) stated some states do not refund overpayments.

Eric Wayne (NC) commented North Carolina will do whatever the taxpayer requests – whether a refund, applying the overpayment to the next tax period, or applying it to another tax program.

Cathy Wicks (MN) commented that the first sentence of Section I.3 is confusing. If more than one additional payment is required, this amendment does not recognize the first additional payment. Richard Dobson (KY) commented this amendment does not allow a payment before the due date. Jane Page (SD) commented the amendment intends to say a state cannot require an additional payment more than 30 days before the return due date.

Jane Page (SD) asked for general comments on the amendment. Mike Eschelbach (MI) commented he viewed this proposal as unnecessarily complicating the Agreement, with no apparent need. Ellen Thompson (NE) asked what state needed this amendment.

Jane Page (SD) asked for a motion to adopt the amendment. No state offered a motion. Craig Johnson (WI) commented that Wisconsin offered the amendment at the request of the BAC.

Sherry Harrell (TN) asked if there was a way to simplify Section I.5 to help sellers get refunds.

Eric Wayne (NC) indicated the specific timeframes in the amendment are of concern when dealing with processing systems and the U.S. Mail Service.

Frank Julian (Macy's) wants certainty on what will happen with overpayments. Frank is not as concerned with specifying the number of days.

Denise Lambert-Harding (NJ) indicated that New Jersey requires monthly payments with quarterly return filings. Denise said it should be clarified that this amendment doesn't

apply to her situation. Scott Peterson (SST) asked whether the amendment would apply to New Jersey if that state decided to require payments twice a month. The response was that it would apply.

Eric Wayne (NC) indicated his state has published a lot of information on overpayments and would prefer the taxpayer reduce the next payment.

Jane Page (SD) commented that when another agency is involved in sending out the refunds, such as the State Auditor, refunds could be delayed. Richard Cram (KS) indicated his state faces the same situation as South Dakota and that refunds can sometimes take up to 60 days. Cathy Wicks (SD) commented the 10 day time frame could be a problem as the Department waits for a check to clear before it can determine if an overpayment situation exists.

Sherry Harrell (TN) suggested the exact timeframes be removed from the amendment and that if a seller doesn't request a refund, the state should either refund, apply the overpayment, or issue a credit notice. By doing one of these three things, it would put a stop to the overpayment cycle.

Scott Peterson (SST) asked whether states would consider getting rid of their additional payment requirements once the Federal Bill passes. Eric Wayne (NC) indicated he would be in favor of such a proposal but requested the retail associations lobby the state legislators as it would carry more weight coming from the industry than the Department. Mike Eschelbach (MI) commented his state would lose a substantial amount of money (\$100 million) if they were forced to eliminate additional payments.

Jane Page (SD) asked that the workgroup have another call in two weeks. In the meantime, she asked that Arkansas, Iowa, Michigan, and two business representatives work on new language for Section I.5. Jane also indicated she will notice the current version of the amendment for both the SLAC and Governing Board meetings in October and the new language for Section I.5 can be substituted at those meetings.

Sherry Harrell (TN) moved to adjourn the meeting and Eric Wayne (NC) seconded the motion. The meeting adjourned.