



SST State and Local Advisory Council

SLAC MEETING MINUTES October 5, 2010

Welcome and Introductions

Jane Page, SLAC Chair (SD) opened the meeting and roll was taken. Thirty-six states (36) were present. Several business representatives were also present.

Steering Committee

Jane Page
Chair
South Dakota

The minutes from the August 26, 2010 meeting were reviewed. Bruce Johnson (UT) moved to approve the minutes. Larry Paxton (IA) seconded the motion. The minutes were approved with a unanimous voice vote.

Sherry Harrell
Vice-Chair
Tennessee

Mike Bailey
GFOA

Christie Comanita
Arizona

Robert Scott
USCoM

Mike Eschelbach
Michigan

Craig Johnson
Wisconsin

Peter McVay
Rhode Island

Bruce Johnson
Utah

SLAC Steering Committee Vote

The SLAC Steering committee slate was presented. One local government position still needed to be filled. There was a nomination from the floor for Robert Scott, Assistant City Manager, Carrollton, TX, representing US Conference of Mayors for local government representative. Cathy Wicks had sent an email to the chair asking that her name be withdrawn from the ballot for state representative. With her name withdrawn there was now a full slate. Those nominated are: Christie Comanita - AZ, Michael Eschelbach - MI, Bruce Johnson - UT, Craig Johnson - WI, Peter McVay - RI, Michael Bailey - Government Finance Officer's Association, Robert Scott - US Conference of Mayors.

Bruce Johnson (UT) moved that states adopt the slate of candidates as nominated. Lars Etkorn (National League of Cities) seconded the motion.

The slate of candidates was approved with a unanimous voice vote.

Discussion of CRIC Interpretative Opinion 2010-05

Eric Vader, representing David Fruchtman's request for interpretation that beverage grade CO2 be classified as a food or food ingredients, summarized the request that was made to CRIC in mid September. At that meeting CRIC had voted 3-1 to approve the request. Sherry Harrell Hathaway (TN) stated that after CRIC's vote there was a change in the CRIC analysis, but the change did not change the result. She said that food and food ingredients is a substance. CO2 is a substance. In addition, language about the Federal Food and Drug Administration was removed from the original analysis.

Mike Eschelbach (MI) questioned whether selling CO2 by itself is a sale of food. Myles Vosberg (ND) stated CRIC had questioned whether CO2 was ingested for taste. It does change the taste of water. There are other food ingredients that are not purchased to ingest on their own, i.e., yeast. Bruce Johnson (UT) expressed concern that CO2 has other uses, i.e., in machine shops. Does this exempt all CO2 as a food ingredient? Does the CO2 sold for food meet the resale criteria, as it becomes part of the product?

Myles Vosberg (ND) stated food grade CO2 is intended for use in food. The company also sells machines to inject the CO2. The sale to the final consumer is not a resale item. Eric Vader stated the food grade CO2 is distinct from the Industrial grade and is more costly. If used by a food manufacturer this would be a resale item. Sales are also made directly to consumers for use at home.

A statement was made that CO2 used in beer is for a propellant and does not mix with the beverage.

This was a discussion only and the Governing Board will vote on the interpretive rule tomorrow.

Withdrawal of Amendments

Jane Page explained that two amendments were withdrawn by sponsoring states and asked SLAC for a voice vote in approving the withdrawal. AM01007, an amendment to Section 310.1 Election for Origin-Based Sourcing, was withdrawn by OH and AM9018, an amendment added a new section to the SSUTA Statute of Limitations for Refunds, was withdrawn by MN.

The withdrawal of the amendments was approved with a unanimous voice vote.

AM10049 and AM10050 Sales Price Definition - Employee Points

Sherry Harrell (TN) stated the amendments may not be ready for final vote. The Amendment provides two toggles to exclude discounts received by employee points from the sales price.

1. Points awarded for achieving goals – a state must toggle to exclude from sales price.
 2. Points that have a cash equivalent – a state must toggle to exclude from sales price.
- BAC prefers that points that have a cash equivalent be included in sales price (option 2). BAC does not want two options.

Mary Cameron (AR) said states should vote yes or no on whether the points are included in the sales price, and there not be options to include or exclude. Tom Gillaspie (NE) requested the issue be referred back to CRIC.

Wayne Zakrzewski (JC Penney) stated sales price does not include discounts. The discounts for employee points are not reimbursed by a third party. The points are not a reimbursement. The CRIC ruling was correct; the points are not part of the sales price. Ellen Thompson (NE) stated the employee points are not a discount and that states voted against the CRIC ruling. The points are part of the consideration. Services provided by the employee are part of the consideration.

More work is needed on this issue so no vote was taken on AM10049 or AM10050.

SL10052 Uniform Rules for Remittances of Funds and Uniform Tax Returns - Due Date

Jane Page (SD) explained that new language was added to AM09016A01 after it had already received one Governing Board vote, but two votes are needed. The change was to add language regarding the Federal Reserve Holidays. If an electronic payment is required, and the due date falls on a Federal Reserve holiday, the seller has until the next business day when the Federal Reserve is open to file and make the payment.

Because this change would possibly require legislative action in some states, it was decided the best action is to withdraw AM09016A01 and substitute the new amendment, SL10052, so the Governing Board can start over with the two votes.

Craig Johnson (WI) made a motion to withdraw AM09016A01 and replace it with SL10052 that has the new language. Myles Vosberg (ND) seconded the motion. The motion was approved with a unanimous voice vote.

Eric Wayne (NC) Questioned how the Federal Reserve language relates to the federal Mail Box rules. No answer was provided so Eric said he would check on this further. Bruce Johnson (UT) motioned to move SL10052 forward to the Governing Board. Tom Connelly (IN) seconded.

Roll Call Vote: 32 Yes, 1 No, 3 Abstained

SL10051 Rule on Communication Policies - Dates

Jane Page (SD) explained the rule requires states to notify the governing board of their legal holidays. The rule also requires that due dates for filing documents with the Governing Board or committees etc, is the next business day if the due date falls on a weekend or holiday.

There are no notes as to who made the motion and seconded it.

Roll Call Vote: 35 Yes, 1 Abstained

SL10065 (AM09014A01) Uniform Rules for Remittances of Funds

Larry Paxton (IA) explained that the amendment is to limit the number of additional payments a state can require of a seller each return period and to set standards for these payments. A change was made to the amendment so that sellers cannot change back and forth between methodologies every month; they must give a 90 day notice first.

Larry Paxton did not think that additional payments were much of an issue with sellers and if it is, the sellers should deal directly with the states. Rich Cram (KS) agreed with IA that this is not a big issue for sellers.

Mark Haskins (VA) said this is not a consistency issue. The effort is to align the prepayment with the actual tax due. Currently estimates are tied to tax paid during the prior year. Mark stated the states should retain control over what they require as payments and the amendment goes beyond the scope of the SSUTA.

Jane Page (SD) asked if a business downsizes and contacts the state could they adjust the prepayment. According to Mark, there is an allowance or exception for hardships.

Fred Nicely (COST) said business would like to do away with prepayments. Sellers should not be required to remit tax they have not yet collected.

Bruce Johnson (UT) made motion to approve SL10065, Sherry Harrell; (TN) seconded.

Role Call Vote: 11 Yes, 8 No, 17 Abstained

Bruce Johnson asked it if those voting No did so due to Mark (VA) statements. - Only VA did so.

SL10046 SL10047 Candy Definition Rule and Appendix

Craig Johnson (WI) explained there are two primary issues in the candy rule. One issue is the use of the word "flour". If a product includes flour it is not candy according to the SSUTA definition of Food. The Rule is trying to further limit the definition of flour by limiting the types of flour to "grain based" flour. The alternate position is that if the word "flour" is on the label (meaning any type of flour), the product is not candy, (i.e. peanut flour, coco flour etc). 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. States should review the list for items they do not think are commonly considered candy.

Russ Brubaker (WA) stated WA likes limiting flour to grain based flour.

Sherry Harrell (TN) explained flour was used in the definition to distinguish between a cookie and candy. Her dictionary definition says flour is grain based flour, not flour

substitutes. If the label says flour it is not candy. If the label says cocoa or other specific flour then it is candy.

Warren Townsend (Walmart) stated this will require a definition change as it looks like a tax broadening.

Scott Peterson (Streamlined) requests that SLAC make the rule logical, the rule does not make sense. He has concern with the words "commonly thought of as candy". Scott suggested just listing flour and walk away - do not define types of flour.

Someone asked how potato bread would be classified; it does not contain grain flour, but flour made out of potato. It was explained the phrase commonly thought of as candy should remove breads from the candy definition.

The second issue is bundled transactions. For food if a bundled transaction contains 50% or more food products it is treated as food. In candy packages where 50% or more of the products contain flour the package, and each candy's ingredients is listed separately, it would be treated as food. If a bundled package does not list ingredients for each item included, the package is treated as candy unless the store can provide 50% or more contained flour. Option 2 is to treat the package as food unless 50% or more contains no flour.

Cathy Wicks (MN) asked what FDA requires for a label.

Craig Johnson (WI) explained the goal of this rule is to provide consistency. The appendix is a list of items commonly thought of as candy. However, some states may not think of all the items as candy, i.e., cereal bars. States should review the list.

Mike Eschelbach (MI) moved the rule and appendix be forwarded to Governing Board Sherry Harrell (TN) seconded.

Role Call Vote: 26 Yes, 8 No, 2 Abstain

SL10064 Substantial Compliant Defined - Rule

Michael Eschelbach (MI) explained that this definition is to make it clearer what substantial compliance means for states when going through the certification process.

The business community opposes the amendment because they think it will weaken the current standard.

Mike Eschelbach (MI) made a motion to approve rule. Richard Dobson (KY) seconded.

Role Call Vote: 33 Yes

Larry Paxton (IA) motioned to adjourn meeting, Dana Angell (WV) seconded. Meeting Adjourned.