

# SLAC MEETING MINUTES

## March 30, 2011

### **Welcome and Roll Call**

Jane Page (SD), SLAC Chair, opened the teleconference meeting and roll was taken. Twenty-seven (27) states, the Government Finance Officers Association, and several business representatives were present.

The minutes from the November 30, 2010 meeting were reviewed. Cathy Wicks (MN) moved to approve the minutes. Larry Paxton (IA) seconded the motion. The minutes were approved with a unanimous voice vote.

### **Discussion and vote on SL10069A02 and SL10070A01 - Candy Rule and Index**

Craig Johnson (WI) began the discussion on the candy rule by explaining the changes that had been made from the November 30, 2010 version. This version of the rule was first approved at the November 30<sup>th</sup> meeting with additional time allowed to complete the accompanying index.

Craig Johnson (WI) explained that the rule begins with an initial determination by the user that the product is “commonly thought of as candy”. Once this determination is made, then the objective elements of the candy definition are applied to determine whether the product qualifies as “candy”. The rule is not intended to address every product in a store.

Vicki Gibbons (WI) provided some background information on the development of the candy definition. Vicki indicated the use of the product was not considered, such as whether the product was used for immediate consumption or as a baking ingredient.

Myles Vosberg (ND) questioned whether BBQ sunflower seeds should be classified as candy since BBQ potato chips were not classified as candy. He felt the products were similar.

Craig Johnson (WI) explained that sunflower seeds are similar to nuts, which is one of the ingredients listed in the candy definition. Rich Prem (Amazon) commented that trying to correlate seeds to nuts is a “slippery slope”. Further discussion on these products followed with a decision to classify BBQ sunflower seeds the same as BBQ chips – not candy.

Craig Johnson (WI) continued his explanation of the index. Craig noted the CRIC interpretations for cereals and cereal bars are reflected in the classifications of these products. Cereals are not candy as they are not sold in the form of bars, drops, or pieces. Cereal bars with flour are not candy and cereal bars without flour are candy.

Rich Prem (Amazon) requested that the rule contain a provision for prospective application. Craig Johnson (WI) commented that the workgroup had discussed this issue and determined that since the definition of candy was not being changed, applying the rule prospectively was not appropriate.

Craig Johnson (WI) moved approval of the rule on candy, SL10069A02, and the accompanying index, SL10070A01. Bruce Johnson (UT) seconded the motion.

**Roll Call Vote: 24 “YES”, 0 “NO”, 5 Abstained.**

**Discussion and vote on SL10050A01 – Employee Incentive Program Points Rule**

Jane Page (SD) reported that the rule was noticed for public comment and that no public comments have been received.

Sherry Hathaway (TN) summarized the development of the rule. Previously, in response to the failure of the Governing Board to adopt the CRIC interpretation that points earned by employees were allowable as a deduction from the sales price, SLAC offered AM10010 which amended the definition of “sales price”. This amendment was not well received by SLAC and will be withdrawn at the May, 2011 Governing Board meeting.

Sherry went on to explain that SL10050A01 was then developed by a workgroup and contains two sections. The first section treats employee incentive points as part of the consideration for the purchase of an item and included in sales price. The second section presents regular employee discounts that are excluded from sales price. Sherry reported that she has provided the proposed rule to Loren Chumley (KPMG) but has not received any feedback from Loren.

Jane Page (SD) commented that if the rule is adopted, states that treat employee incentives as a discount would have to change.

Russ Brubaker (WA) moved for the adoption of SL10050A01. Cathy Wicks (MN) seconded the motion.

**Roll call vote: 25 “YES”, 0 “NO”, 4 Abstained.**

**Discussion and vote on SL11002 – Sourcing Personal Care Services Rule**

Alan Lyon (WA) reviewed SL11002 which is limited to personal care services performed on the human body.

Rich Prem (Amazon) commented that the rule is missing a large piece relating to sales tax. Rich feels the rule needs to reference the Groupon and LivingSocial certificates to make sure states are consistent in their treatment of the certificates. Rich feels the Groupon program is a discount funded by the service providers who advertise through the Website. The certificates purchased can be used to cover personal care services provided at multiple locations.

Cathy Wicks (MN) reported that some states have already addressed Groupon certificates. Minnesota treats the certificate as a gift certificate and once the service is provided, the sale is sourced accordingly.

Val Pfeiffer (Tax Coefficient) asked whether the Groupon certificates were a third party discount.

Richard Dobson (KY) commented that while the Groupon certificates need to be addressed, the issue does not need to be mentioned in this sourcing rule.

Sherry Hathaway (TN) commented that this rule does not cover issues for sales which are available at multiple locations. The rule needs only to address the sourcing of the sale when it is provided. Victoria Daniels (IA) agreed with Sherry. Victoria indicated we would have to go back to each rule already in place to insert the provisions requested by Amazon. Robert Thompson (OK) agreed with Sherry and Victoria stating the rule isn't about sales price, but only for sourcing.

Jane Page (SD) indicated she would place the Groupon issue on the SLAC agenda for May, 2011.

Bruce Johnson (UT) suggested that since all personal care services are available at multiple locations, we should clarify in this rule that personal care services available at multiple locations pursuant to a single payment instrument are outside of this rule. This change was then made to the rule.

Bruce Johnson (UT) moved approval of SL11002, as amended. Larry Paxton (IA) seconded the motion.

**Roll Call Vote: 17 "YES", 0 "NO", 9 Abstained.**

### **Discussion and vote on SL10032 – Netting Overpayments on Audit**

Bruce Christensen (SD) began the discussion stating the workgroup could not resolve a number of issues with this amendment. Bruce reported that a number of states have negligence penalties for underpayments and this amendment may keep them from applying these penalties. Bruce also reported there were differences among states on whether a refund could be obtained depending on if a sales or use tax was collected by the retailer.

Craig Johnson (WI) asked whether Wisconsin should withdraw this amendment, which was introduced by his state on behalf of the BAC. Jane Page (SD) suggested she explain in the SLAC report to the Governing Board that the amendment was rescinded and ask for the Board to approve the action. Bruce Christensen (SD) suggested the SLAC report to the Board also indicate the workgroup's recommendation was for the amendment to be rescinded.

Bruce Johnson (UT) moved that SLAC take no action on the amendment and recommend to the Governing Board the amendment be withdrawn. Myles Vosberg (ND) seconded the motion.

**Roll Call Vote: 23 “YES”, 0 “NO”, 3 Abstained.**

### **Discussion on SL11001A01 – Credit For Taxes Paid Amendment**

Jane Page (SD) reported that the amendment was not ready for a vote. Sherry Hathaway (TN) reported that survey responses were still being compiled.

Greg Potegal (WA) presented a summary of the amendment. The amendment creates a new section in the Agreement outlining how credit for taxes paid to other states and local jurisdictions will be handled. Greg indicated the BAC wanted to address successive uses of a product and for the Governing Board to be involved when disputes arose over which state could tax an item. The workgroup did not agree with the inclusion of either of these issues. Greg also reported that a survey is being conducted on how credits for leases and rentals are currently handled by the states.

Jane Page (SD) commented the current amendment does not include leases or rentals and that the workgroup may work to find a way to include them. Otherwise, a separate rule for credits on leases and rentals will be developed.

Val Pfeiffer (Tax Coefficient) commented that the current definition of “sales price” includes some leases – those with \$1 purchase option. Val also stated that non-Streamlined states have different definitions of lease and rentals and that this must be considered in the workgroup's discussions.

### **Discussion on potential Sales Price Amendment and Rule for Taxes Imposed on the Seller**

Jane Page (SD) reported the workgroup is developing a rule for the phrase in sales price for “all taxes imposed on the seller”. As the work has progressed it became apparent a new toggle in the sale price definition may be needed.

Sherry Hathaway (TN) reported the amendment to the sales price definition is needed for taxes imposed on the seller which may be passed on to the consumer. Sherry indicated the new toggle could be added as an option to exclude those taxes which may be passed on to the consumer. Sherry reported the draft rule gives examples of which taxes are included in the sales price and those which are excluded. Sherry indicated there may still be a problem with the 12% Federal Excise Tax on truck and trailers. The rule is currently drafted to include this tax.

Richard Dobson (KY) commented that if such a toggle is elected, then all taxes would be out that were imposed on the seller on the retail sale, but the seller may collect from the consumer. Richard stated he cannot see the intent of the amendment.

Craig Johnson (WI) indicated that Wisconsin has some Public Service fees that the State does not administer. Also, Wisconsin has some state taxes that contain a provision where the seller “may” collect the tax from the consumer. Craig indicated he does not see how we can treat all taxes the same and that the toggle would require the same treatment.

The representative from Virginia commented the term “any tax” will open the rule too much. The representative suggested the rule contain a list of the taxes which are covered.

Sherry Hathaway (TN) indicated all these concerns will go back to the workgroup.

### **Report on other issues**

Jane Page (SD) discussed the relief from liability provided for in Section 304(C) and the additional information some states include on non Streamlined exemption certificates. After having had previous discussions on these issues with states and business Jane will report to the Governing Board that neither of these issues requires further review.

Jane Page (SD) reported that Mike Eschelbach will lead a workgroup on voluntary disclosure agreements and amnesty.

Russ Brubaker (WA) motioned to adjourn the meeting. Meeting adjourned.