



SST State and Local Advisory Council

SLAC MEETING MINUTES May 3, 2010

Welcome and Roll Call

Jane Page (SD), SLAC Chair, opened the teleconference meeting and roll was taken.

Twenty five states were on the call. No business representatives were identified as present. Since a quorum of 27 states was not in attendance, any votes taken would represent consensus votes only.

Steering Committee

Jane Page
Chair
South Dakota

Sherry Harrell
Vice-Chair
Tennessee

Mike Bailey
GFOA
City of Renton, WA

Christie Comanita
Arizona

Robert Scott
USCOM
Carrollton, TX

Mike Eschelbach
Michigan

Craig Johnson
Wisconsin

Peter McVay
Rhode Island

Bruce Johnson
Utah

The minutes from the March 30, 2011 meeting were reviewed. Greg Potegal (WA) offered additional notes for the discussion and vote on SL11002 – Sourcing Personal Care Services Rule. The additional notes reflect a concern by Rich Prem (Amazon) over the potential implications of the rule to Groupon and Livingsocial certificates. The minutes will reflect that SL11002 is not intended to apply to marketing program certificates that may be redeemed at multiple locations.

Greg Potegal (WA) moved approval of the minutes, as amended. Cathy Wicks (MN) seconded the motion. The minutes were approved on a unanimous voice vote.

Discussion and vote on SL11003A02 and SL10063A02 – Sales Price Amendment and Rule

Jane Page (SD) explained the changes in SL11003A02 which adds a new toggle in the definition of “Sales Price”. The new language in the toggle stipulates that states may not select individual taxes to include or exclude from the sales price.

Jody Bartels (SD) continued the discussion by stating one of the primary issues addressed by the amendment is whether states could exclude specific taxes from the sales price simply by stating the tax was not in “sales price”. The amendment would prohibit this type of action. The amendment allows states to exclude taxes imposed on the seller if the seller is allowed to pass the tax on to the consumer and the tax is itemized on the bill.

Jody continued the discussion by providing a section by section explanation of the rule to Section 327.7, SL10063A03. Section 3 of the rule addresses the new toggle in sales price if the amendment is adopted.

Sherry Hathaway (TN) explained that Part B of the rule applies to all components or elements of the sales price definition, not just taxes.

Myles Vosberg (ND) commented that North Dakota has a law allowing local jurisdictions to impose lodging taxes. The law is silent on whether the seller is allowed to pass the tax on to the consumer. Jody Bartels (SD) replied that since the authorizing statute is silent, the rule states these lodging taxes are included in the sales price. If North Dakota wants to exclude the taxes from sales price, the authorizing statute must be changed to make it clear that the seller may collect it from the customer.

States will have the time period provided in the SSUTA to come into compliance with this amendment to the Agreement.

Phyllis Shambaugh (OH) commented she needed more time to examine the rule and the implications it has for Ohio. Jane Page (SD) said the SLAC vote can wait, but this issue has been on more than one SLAC agenda. Will states take the time to review if we wait longer?

Cathy Wicks (MN) moved to adopt SL11003A02. Mary Cameron (AR) seconded the motion.

Roll Call Vote: 20 “YES”, 0 “NO”, 5 Abstained.

Myles Vosberg (ND) moved to approve SL10063A03, the rule to accompany SL11003A02. Craig Johnson (WI) seconded the motion.

Roll Call Vote: 20 “YES”, 0 “NO”, 5 Abstained.

Scott Peterson reminded the states that SLAC votes do not change the states' laws. The SLAC votes are more of a vote on whether a position is good public policy. Scott encouraged states to vote on proposals as opposed to abstaining, if at all possible.

Discussion on AM10010 and RP1007A01 – Sales Price Amendment and Rule for Employee Incentive Program Points

Sherry Hathaway (TN) explained the history of the rule which resulted from 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. The rule was approved by SLAC at the March 30, 2011 meeting and has been submitted to CRIC for review. No public comments were received.

An amendment to the sales price definition was proposed (AM10010) at the last Governing Board meeting which would allow states to adopt a toggle to exclude the value of employee incentive points. From the last SLAC meeting the proposal for such a toggle was not well received by several states or business community members. Cathy Wicks (MN) explained that the amendment is no longer necessary as the interpretive rule addresses the situation sufficiently.

Sherry Hathaway (TN) moved to recommend withdrawal of AM10010 to the Governing Board. Cathy Wicks (MN) seconded the motion.

Roll Call Vote: 24 “YES”, 0 “NO”, 1 Abstained.

Discussion on SL11001A02 – Credit for Taxes Paid

Greg Potegal (WA) provided an overview of the amendment and progress of the workgroup. Greg indicated there are about four states that don't grant credit when tax is paid on an accelerated basis, and Washington is one of them. These states will have to

change their law if this amendment is adopted. The workgroup will continue to meet and work on the amendment.

Craig Johnson (WI) asked whether Section A(2)(B) includes tax paid in error. Sherry Hathaway (TN) responded that the amendment is intended to cover taxes legally/properly imposed on retail sales sourced according to the Agreement. Sherry suggested the rule that will accompany the amendment clarify this situation and that examples be added to cover this situation.

Myles Vosberg (ND) recommended the words “legally imposed” or “properly imposed” be added to the amendment to clarify credit is only provided for taxes imposed under such standards. The credit is therefore, based on a two-part test. The tax is legally imposed and the sale is sourced per the Agreement.

Jane Page (SD) indicated that the BAC had also submitted their proposed amendment for credit for taxes paid (SL 1004A01) but since no one from the BAC was on the call that would not be discussed at this time

Discussion on Exemption Certificates

The Governing Board had asked SLAC to review the requirements for exemption certificates. Jane Page (SD) began the discussion by asking states whether an exemption certificate would be denied if the purchaser did not complete the additional information or non-SST data fields. Jane had prepared a short outline of the issue with two alternatives for acceptance of certificates. Either the state would accept the certificates and give liability relief to the seller when non-SST data is incomplete or the state would not give the seller relief.

Myles Vosberg (ND) indicated his state would prefer to give relief to the seller if the purchaser does not complete the non-SST data fields. Kentucky responded that there may be difficulties with providing relief with the current format of existing certificates.

Sherry Hathaway (TN) commented that the Audit Committee has been working on a PowerPoint presentation that includes information on exemption certificates. Sherry indicated states should be allowed to have specific exemption certificates which require the purchaser to complete the non-SST data fields. However, the seller would be relieved if only the SST required information is provided. The additional information assists the state in understanding the purchaser’s business. Sherry emphasized the message that needs to be communicated to sellers and purchasers is that state-specific questions can be requested from the purchaser.

Cathy Wicks (MN) commented that states should be allowed to keep their existing certificates and not have to overhaul the current formats. Cathy suggested the current rule, 317.1, subsection 10, may need to be amended to clarify the relief for sellers is provided even though the non-SST data is incomplete.

Jane Page (SD) indicated SLAC will propose an amendment to Rule 317.1.

Discussion on State Rate Change Notification

Jane Page (SD) reported that a survey showed states differ on whether they have a statute providing a 30 day relief period for state rate changes. The issue under discussion relates to whether states can give relief through a written or unwritten policy at the time the rate changes.

Cathy Wicks (MN) commented that Minnesota has the relief in statute but that flexibility was needed as state rates are changed infrequently. Sherry Hathaway (TN) commented that the Legislators' hands cannot be tied when making a decision on a state rate change. The process SST takes after a violation of Section 304C is the primary concern for Streamlined. Richard Cram (KS) commented that the Kansas Legislature wanted to ignore Section 304C in its debate on a state rate change. Richard indicated SST will always be addressing the issue after the fact.

Mike Eschelbach (MI) commented there is no requirement for any advanced notification of a state rate change. The issue is just one of lead time and liability relief for the seller.

Sherry Hathaway (TN) reminded the group that the two year process for violations of the Agreement is still in place.

Scott Peterson (Streamlined) commented that from a seller's perspective, liability relief for the first 30 days of a state rate change is all that is needed and a statutory provision may not be necessary.

Cathy Wicks (MN) suggested that SLAC draft a rule or at least inform the Governing Board of the position SLAC supports. Jane Page (SD) asked whether a state policy would only need to be in place by the time the state completes its certificate of compliance. Sherry Hathaway (TN) explained the situation Tennessee encountered with its compliance review on a state rate change. Sherry indicated both CRIC and BAC wanted something more than just an administrative decision to provide relief – they needed at minimum a written policy from Tennessee.

Cathy Wicks (MN) suggested that if a written policy is adequate, that the policy should be communicated on the Department's Website.

Mike Eschelbach (MI) commented that Michigan's rate is set in the Constitution. Mike felt that providing relief through a statute or written policy does not accommodate states like Michigan.

Myles Vosberg (ND) commented that during the 2010 compliance review most states were able to provide a written policy covering the 30 day relief period. However, Myles requested guidance for the 2011 review process.

There was no further discussion on the issue. Jane Page (SD) adjourned the meeting.