



SST State and Local Advisory Council

SLAC MEETING MINUTES May 17, 2011

Welcome and Roll Call

Jane Page (SD), SLAC Chair, opened the meeting and roll was taken. Twenty seven states, three representatives from the Government Finance Officers Association, and one representative each from the U.S. Conference of Mayors, National Association of Counties, and National League of Cities were present for a total of thirty three delegates.

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 May 3, 2011 teleconference meeting were reviewed. Mark Haskins (VA) moved for approval of the minutes as written. The minutes were approved with a unanimous voice vote.

Discussion and vote on Sales Price Amendment and Rule Amendment– SL11003A02 and SL10063A03

Sherry Hathaway (TN) provided an overview of the amendment to the “Sales Price” definition. A new toggle is proposed for the definition to allow an exclusion for taxes which are imposed on the seller, but which may be passed on to the consumer if separately stated on the customer’s invoice. The amendment to Rule 327.7 covers the new toggle in SL11003A02 and also adds that if an authorizing statute for a tax is silent as to the imposition or collection of the tax, then the tax is considered imposed on the seller and included in the “Sales Price”.

Christie Comanita (AZ) asked whether Native American taxes were covered under the proposed toggle and rule. Arizona has a statutory exclusion for tribal taxes when the state imposes a tax on the same transaction.

Sherry Hathaway (TN) explained that if a Native American tax is a “sales tax”, it is already excluded from sales price under Part 1 of Rule 327.7. The Native American tax would be treated the same as a local sales and use tax.

Christie Comanita (AZ) commented that since tribal taxes are not covered by the Agreement, such taxes should be treated the same as federal taxes but only when imposed on non-Native consumers. Christie further explained that Arizona’s tax is a privilege tax imposed on anyone engaged in business in the state.

Mike Eschelbach (MI) commented that Michigan would include tribal taxes in the sales price since such taxes are not “local taxes”. Sherry Hathaway suggested the words “or tribal tax” be added to the toggle to clarify that states may elect to exclude any tribal tax imposed on the seller. Christie Comanita (AZ) thought that would help cover her state’s situation with tribal taxes.

Eric Wayne (NC) commented that North Carolina has an exemption for transactions subject to a tribal tax. Sherry Hathaway (TN) indicated the proposed changes to Rule 327.7 will not apply to or affect that exemption.

Paul Harper (MO) commented that Missouri treats federal excise taxes differently from most states which would make it even more difficult for his state to become a member.

Richard Dobson (KY) suggested these amendments have a delayed effective date that is tied to the passage of federal legislation. Richard also commented Kentucky would have a difficult time adopting this amendment.

Bruce Johnson (UT) commented that treating tribal taxes the same as federal taxes is a problem as the taxes are not similar. Sherry Hathaway (TN) clarified that under the proposals, states could not exclude just tribal taxes if such taxes were imposed on the seller. Sherry further explained that in the workgroup's research, they did not find a federal tax that contained the language "imposed on the seller but may be passed on to the consumer". Sherry explained that under the proposals, states could not pick one tax imposed on the seller and exclude it from "sales price".

Eric Wayne (NC) commented that the proposals appear to be taking away from states the authority to tax or exempt a particular component of "sales price".

Bruce Johnson (UT) indicated the Utah Legislature is looking at imposing sales tax on gasoline and moving away from the current gallonage tax. Mike Eschelbach commented that Michigan imposes sales tax on gasoline and includes the federal excise tax in the tax base.

Christie Comanita (AZ) moved to amend SL11003A01 to add the words "or tribal tax" after the words "local tax" in line one of the toggle language. The motion passed on a voice vote.

Eric Wayne (NC) suggested the second sentence of the new toggle in AM11003A02 be removed. The sentence reads "States may not select individual taxes to include or exclude from the sales price".

Fred Nicely (COST) asked that states include all taxes imposed on the seller in the Matrix and indicate whether the taxes are included or excluded from the sales price.

Myles Vosberg (ND) commented that the proposals to the definition and rule are losing consistency. Myles was reluctant to support the amendment at this stage because it was not clear which taxes were imposed on the seller and whether the seller is allowed to pass them on to the consumer. Bruce Johnson (UT) commented the because the definition requires a tax be separately stated in order to be excluded from the sales price, that puts sellers on notice they may have separate tax treatment for certain taxes.

Robert Thompson (OK) commented there is no authority to select individual federal taxes for exclusion, so removing the second part of the toggle does nothing.

Val Pfeiffer (Tax Coefficient) commented that states cannot elect this proposed toggle for one type of tax with a "may" provision and include other taxes with a "may" provision.

Eric Wayne (NC) suggested the SLAC continue to work on the amendment and rule.

Richard Dobson (KY) moved to add the language "The enactment date of this amendment and accompanying rule shall take effect upon the enactment of the Main Street Fairness Act." The Chair called for a voice vote and the Chair ruled the proposed amendment lost.

Tim Jennrich (WA) indicated that delaying the toggle will mean states currently including taxes with the "may be passed on to the consumer" language are out of compliance.

Richard Dobson (KY) indicated this proposal will have a fiscal impact and that as we go deeper into the Federal process, we may be wise to delay changing the "Sales Price" definition.

Deborah Bierbaum (AT&T) commented the toggle is currently needed. Otherwise states which have chosen to exclude certain taxes on the seller are out of compliance. Richard Dobson (KY) commented the upcoming compliance review for states not include this issue. Bruce Johnson (UT) commented the proposed amendment and rule should proceed. States which currently exclude taxes with a "may" provision are clearly out of compliance. Deborah suggested we have different effective dates for parts of the amendment and rule.

Ellen Thompson (NE) suggested SLAC have more face-to-face meetings as a better way to resolve issues such as this. Based on the length of the current discussion and varied issues still being expressed, the phone meetings are not nearly as productive.

No further action was taken on SL11003A02 and SL10063A03.

Discussion and vote on AM10010 – Sales Price Amendment on Employee Incentive Points

Sherry Hathaway (TN) explained the origin of the proposed amendment. Due to the fact the Governing Board failed to adopt the CRIC Interpretation that employee earned incentives were excluded from "Sales Price", a SLAC workgroup offered AM10010 as a solution. The amendment would have allowed states to adopt a toggle to exclude the value of employee incentive points from the sales price. The amendment was not well received by either the states or the business group. Based upon a survey of states, the workgroup decided to propose a rule, RP1007A01, which reflects the majority position of the states that incentive points are part of the consideration received by the seller and included in the sales price. This rule was approved by SLAC at the May 3, 2011 meeting and is on the agenda for the Governing Board.

Mike Eschelbach moved to withdraw AM10010 as it is not longer needed. The proposed rule, RP1007A01, sufficiently addresses the issue. Christie Comanita seconded the motion. The motion was approved with a unanimous voice vote.

Jane Page (SD) adjourned the meeting.