



SST State and Local Advisory Council

SLAC MEETING MINUTES August 30, 2011

Welcome and Roll Call

Steering Committee

Jane Page
Chair
South Dakota

Jane Page (SD), SLAC Chair, opened the meeting and roll was taken. Thirty two states and one representative of the Government Finance Officers Association (GFOA) were present. Several representatives from the business community were also present.

Sherry Harrell
Vice-Chair
Tennessee

The minutes from the May 17, 2011 meeting were reviewed. Mike Bailey, GFOA, moved for approval of the minutes as written. Cathy Wicks (MN) seconded the motion. The minutes were approved with a unanimous voice vote.

Mike Bailey
GFOA
City of Renton, WA

Discussion and vote on Sales Price Definition Amendment - South Dakota and Tennessee versions (SL11003A04 and SL10063A05) and Kentucky versions (SL11016 and SL11017)

Christie Comanita
Arizona

Jane Page (SD) explained that the amendment to the Sales Price definition applies to taxes which are imposed on the seller. Currently, all taxes imposed on the seller are included in the sales price. Under the SD amendment, if the tax imposition language allows the tax to be passed on to the consumer, a state may adopt a toggle to exclude all such taxes from the sales price.

Robert Scott
USCOM
Carrollton, TX

Mike Eschelbach
Michigan

Craig Johnson
Wisconsin

Peter McVay
Rhode Island

Richard Dobson (KY) explained Kentucky's version of the same amendment. SL11016 goes a step further and allows a state to choose which taxes imposed on the seller, that may be passed on to the consumer, that can be excluded from the sales price. The excluded taxes must be identified in state statute or state administrative regulations. This version gives states more flexibility in their tax policy decisions.

Bruce Johnson
Utah

Jane Page (SD) explained that both versions of the amendment are more expansive than the language in the current Agreement definition. Jane commented an amendment to the definition of sales price is needed to allow for the toggle; otherwise several states will be out of compliance. This issue is not being reviewed by the CRIC committee in its annual compliance reviews.

Richard Dobson (KY) explained that if the Kentucky version is adopted, less action will be required for states to come into compliance.

Myles Vosberg (ND) asked whether only the excluded taxes would need to be in the Matrix. Sherry Hathaway (TN) explained that each version of the rule requires the excluded taxes to be listed in the Matrix.

Jane Page (SD) suggested the words "include or" be deleted from the second sentence of #2 in the Kentucky version as the toggle only applies to excluded taxes. Sherry Hathaway

(TN) also suggested the words “making either election above” be inserted in the same sentence.

Deborah Bierbaum (AT & T) asked whether the Kentucky amendment allows for different tax treatment depending on the type of customer – such as residential or commercial.

Richard Dobson (KY) explained the amendment doesn’t address this issue but he would argue a state could differentiate between types of service when choosing to exclude a tax. For example, a state could elect to exclude a tax that applies only to residential services.

Deborah Bierbaum (AT & T) and John Cmelak (Verizon) commented that such a differentiation based on type of customer or type of service makes it difficult for carriers to program the tax calculation.

Richard Dobson (KY) commented that in Kentucky’s case, the exclusion of taxes on residential customers would not cause a hardship for carriers since wireless service does not fall within the definition of “residential telecommunications”. Richard also commented that the debate is whether the current sales price definition precludes states from maintaining long-standing exemptions. Without the amendment, there would have to be a repeal of certain exemptions to maintain compliance with the Agreement.

Deborah Bierbaum (AT & T) indicated she has no problems with the Kentucky amendment if all customers are treated the same. Deborah believes the Kentucky amendment goes one step further by treating customers differently.

Susan Mesner (VT) commented that the Kentucky amendment may put the Governing Board in a bad spot as the issue of whether customers could have different tax treatment is not resolved.

Jerry Johnson (OK) commented the Kentucky version seems reasonable and the matrix would make it clear whether a tax was included or excluded. Jerry asked the business representatives whether they would support the amendment with the position states could not differentiate between types of customers. Deborah and Val Pfeiffer (Tax Coefficient) indicated they could support this position.

Mark Nebergall (SofTec) asked whether a white paper had been prepared on this issue. Mark felt there were too many nuances not reflected in either the rule or amendment. Jane Page (SD) said there was only a Summary Paper. She also offered that one of the amendments could be voted on today. Work could then be done on the “residential issue” language before the Governing Board meeting and added at the meeting in October.

Sherry Hathaway (TN) explained that her research of case law in this area came up short in addressing imposition statutes that contained the “may be passed on to the consumer” provision. The Kentucky situation is close to a threshold situation by exempting a part of the sales price.

Eric Wayne (NC) commented that flexibility for states is good but asked what Kentucky’s next step would be on the residential issue. Richard Dobson (KY) responded that if the toggle is adopted with the provision a state could specify which taxes were excluded from

sales price; he would most likely request a CRIC Interpretation on whether exclusion for taxes only on residential services is allowed.

Jane Page (SD) added language to the amendment and rule that the exclusion for specific taxes from sales price may not be based on the type of customer or product sold.

Cathy Wicks (MN) moved the approval of SL11016 as amended. Mike Eschelbach (MI) seconded the motion.

Roll Call Vote: 27 “YES”, 0 “NO”, 2 Abstained.

A short discussion was held on the accompanying Sales Price rule and the language added to the amendment was also added to the rule.

Richard Dobson (KY) moved the approval of Rule SL11017 as amended. Mike Eschelbach (MI) seconded the motion.

Roll Call Vote: 27 “YES”, 0 “NO”, and 2 Abstained.

Discussion on Federal Bill HR 1860 – Digital Goods and Services Tax Fairness Act

Tim Jennrich (WA) and Stacey Sprinkle (Verizon) provided a brief overview of the federal bill on sourcing digital goods and digital services. The bill is trying to accomplish the same sourcing principles as the Mobile Telecommunications Sourcing Act. With this bill, sellers would be able to identify which state could tax digital products and services.

Tim Jennrich explained there are differences between the Federal bill and the SSUTA in both definitions and sourcing principles. If the federal bill is passed it may complicate state compliance with the SSUTA.

This issue will be discussed further at the next Governing Board meeting.

Sherry Hathaway (TN) moved to adjourn the meeting.