



Streamlined Sales Tax Executive Committee Meeting Minutes
Friday, March 29, 2019, 11:00 am central
Teleconference

Call to Order and Roll Call

Representative Kennedy called the open portion of the meeting to order at approximately 11:00 am central. The roll of the Committee was called. Present were Representative Brian Kennedy (RI), Tim Jennrich (WA), Senator Ann Rest (MN), Diane Hardt (WI), Tom Atchley (AR), Clark Jolley (OK) and Dan Noble (WY). Absent were Senator Wayne Harper (UT) and Representative Tim Reed (SD). The quorum was established with 7 out of 9 Committee members in participation.

Report on Closed Session- Representative Kennedy

Representative Kennedy indicated the closed session discussion consisted of issues related to the Federal Affairs contracts and the CSP contract negotiations.

Review and approve minutes from January 11th, 2019 Executive Committee Meeting (EM19002)

There was no discussion regarding the minutes. Senator Rest and Richard Dobson motioned to approve EM19002. A voice vote was taken and was unanimous. Motion carried.

Status of Federal Remote Seller Collection Authority Legislation- Randi Reid

Randi Reid reported the following:

Since the U.S. Supreme Court ruled in *South Dakota v. Wayfair* last year, many states have been working towards requiring out-of-state sellers to collect and remit sales tax for transactions made into the state, regardless of any physical presence. States are moving judiciously, but if a state chooses to ignore the simplifications, small seller thresholds and no retroactive application features of the South Dakota law in crafting their own laws, there may be more litigation, and a higher potential for action by Congress. The Streamlined member states are in a very good position based on this decision since they have all enacted similar simplification measures to what South Dakota, are not applying the law retroactively and are adopting small seller thresholds.

Randi provided a quick political and policy snapshot for the 116th Congress, which began on January 3, 2019. The 2018 midterm elections swept in Democratic control of the House, while maintaining a Republican majority in the Senate. Expect this next year to be active in both the legislative and regulatory arenas, but also recognize that a political party split between the legislative and executive branches coupled with the 2020 presidential elections could greatly impact the ability to get legislative items completed outside the annual budget and appropriations processes. Much of the legislative agenda is expected to need sixty votes to pass the Senate, which means that to be enacted, bills ultimately will need bipartisan support.



At this time, no legislation supporting the collection of sales and use taxes on remote sales has been introduced during this new Congress. In years past, the Streamlined Sales Tax Governing Board advocated for federal legislation that would specify what simplifications a state must make to be able to require online sellers to collect taxes. We have heard no indication that action on this kind of legislation is being considered this Congress. The Streamlined Sales Tax Governing Board is not advocating for federal e-fairness legislation at this time. Instead, let the states demonstrate that they can and will implement this fairly and in a transparent manner and in a manner that does not place undue burdens on remote sellers.

Three bills have been introduced by e-fairness opponents this year that would proactively prohibit states from applying remote sales tax collection retroactively. Congressman Bob Gibbs (R-OH) introduced H.R. 379, The Protecting Businesses from Burdensome Compliance Cost Act on January 9, 2019. It has one cosponsor – Rep. Greg Gianforte (R-MT). The bill states:

1. States cannot retroactively collect sales tax for previous interstate sales where no nexus existed.
2. States that want to collect sales tax from out of state vendors who do not have a nexus, must enact legislation that:
 - Provides a statewide uniform tax rate that cannot be higher than the highest combined rate of all local and state taxes.
 - Permits out of state vendors to remit sales taxes to one location.
 - Provides a statewide uniform provision for what is taxable.
3. Vendors that have nexus operate as they currently do.
4. There is a “Start Date” - not before January 1, 2020 - for states to require collection and remittance of sales tax by out of state sellers.

Please note in the reference of “nexus” in H.R. 379, the bill is referring to physical nexus and the Wayfair decision addresses economic nexus.

On January 15, 2019, Senator Jon Tester (D-MT) reintroduced S. 128, The Stop Taxing Our Potential (STOP) Act. The bill has four cosponsors all from no sales tax states: Senators Jeanne Shaheen (D-NH), Maggie Hassan (D-NH), Ron Wyden (D-OR), and Jeff Merkley (D-OR). The legislation would overturn the recent Supreme Court ruling in *South Dakota v. Wayfair*. The senators believe these changes to state and local tax law will create a new burden for all businesses and consumers and it will hurt small businesses, which do not have the resources to navigate collecting sales taxes for multiple taxing jurisdictions across the country. More specifically, the STOP Act would prohibit a state from imposing on a person obligations related to collecting or paying a sales tax, use tax, or similar tax unless the person had a physical presence in the state during the calendar quarter with respect to which the obligation is imposed. A person is physically present if the person's business activities in the state include:

- maintaining a commercial or legal domicile in the state;
- owning, holding, leasing, or maintaining certain property in the state;



- having one or more employees, agents, or independent contractors in the state who provide on-site design, installation, or repair services on behalf of the remote seller;
- having one or more employees, exclusive agents or exclusive independent contractors present in the state who engage in activities that substantially assist the person to establish or maintain a market in the state; or
- maintaining an office in the state at which three or more employees are regularly employed.

The bill specifies certain activities and agreements that indicate a de minimis physical presence that is excluded from the definition of "physical presence." It also specifies that U.S. district courts have original jurisdiction over civil actions to enforce this bill.

On March 27, 2019, Congressman Jim Sensenbrenner introduced H.R. 1933, The Online Sales Simplicity and Small Business Relief Act of 2019. The bill has 5 cosponsors: Reps. Anna Eshoo (D-CA), Jeff Duncan (R-SC), Anne Kuster (D-NH), Zoe Lofgren (D-CA), and Chris Pappas (D-NH). The bill would prohibit states from taxing remote sellers until January 1, 2020 to prevent retroactive collection and shield businesses with less than \$10 million in annual sales from the tax until the U.S. Congress approves an interstate compact with clearly defined nexus thresholds.

At this time, no committee action or floor action has occurred on these three bills. We will keep you posted as we hear more.

House and Senate champions remain very pleased with the Wayfair decision by the Supreme Court last year. They support the rights of states to collect out-of-state sales and use taxes that are already owed. They want states to take note of the guidance Wayfair provides regarding retroactivity, simplification, and small seller thresholds, but they believe Congress should not take any legislative action until it better understands the issues facing those impacted by this ruling and further reviews how state implementation is progressing.

The SSTGB was in Washington, DC in early March 2019, educating congressional policymakers about the current state implication efforts post the Wayfair decision. The Board members met with 20+ congressional offices over two days, focusing on educating new House freshman members, new members of the House Judiciary Committee, and the staff of our Senate champions – Senators Dick Durbin, Mike Enzi, and Lamar Alexander. We continue to hear that Congress is monitoring state implementation efforts.

Next Steps

In light of the Wayfair decision by the SCOTUS and the recent legislative activity by e-fairness opponents, we are continuing to monitor activities on the Hill related to remote sales tax collection in the new Congress. The SSTGB will push back on any activities that might jeopardize implementation of the Wayfair decision.



Reports of Committees

Executive Committee

Representative Kennedy reported on the annual planning meeting which took place in January in Dallas, TX. Topics of discussion included Wayfair implementation by the states, adoption of marketplace facilitator legislation, preserving SST simplifications and benefits, marketing Streamlined, and ideas to increase state membership while identifying barriers to membership for some non-member states.

There was also discussion with the Executive Committee regarding another class of membership for states who are unable to become full member states, but want to use the registration system and participate in the CSP contract and certification processes. Craig Johnson asked if any Executive Committee member is opposed to this, none were. Diane Hardt added her support. Dan Noble stated the negotiations would have to involve the CSPs to sell the services to non-member states. He wondered if we have determined what the certification process would look like. Craig stated the rate and jurisdiction database would be the same. Non-member states would need to review the taxability matrix to certify the CSPs and would need to generate some additional information and breakdown. The process would be the same, but they would expand the number of product categories.

Craig mentioned that since the registration system is now open to pick and choose states, one of the biggest questions we get from sellers now is asking about what we can do to help them in the remaining 22 states. Unfortunately, since they are not participating with us, we can't help them other than to provide them with the state's contact information and encourage them to use the CSPs.

Finance Committee

Diane Hardt stated the Finance Committee met earlier this month to review the statements which are trending exactly as predicted and are lower than budgeted amounts. The 1st and 2nd quarter statements were approved to send on to the Executive Committee. Representative Kennedy asked for comments, none were received. Dan Noble and Diane Hardt motioned to approve the statements. A voice vote was taken and was unanimous. Motion carried.

State and Local Advisory Council

Richard Dobson reported SLAC met in Chandler, AZ on February 11th. They had good discussions regarding communication and education. Several workgroups were formed including SER expansion and multiple returns, digital goods sourcing (this has since been resolved, and the workgroup ended), sourcing of services and consideration of using registration information received through the SSTRS as a means of identifying sellers that may need to be made aware of other possible taxes they may owe. Section 401D. of the SSUTA is being looked at for possible revision to make it clear states can use this information for that purpose. The workgroups will report at the May GB meeting.



Certification Committee

Tim Bennett stated the Certification Meetings were held in Chandler, AZ on February 13 & 14. There was much discussion regarding possible SER changes. During the closed meeting, each CSP had the opportunity to demo their testing systems for the states as well.

Audit Committee

Darrell stated the Audit Committee met in Chandler, AZ in February. There was discussion regarding switching from Sharefile to a data warehouse to store information received from CSPs. The data warehouse would be the most secure option regarding privacy with the sales data we receive and would also allow for the formatting of the information, etc. to be verified at the time it is uploaded and CSPs could upload the information at any time. States would then be able to pull their state information whenever they want to as well. More work is needed to determine what the costs for this might be, etc.

Discussion and Development of Executive Committee's Recommendation Related to Consideration of Sanctions on Georgia

Craig Johnson stated Georgia was found out of compliance for the same issue as previous years plus one additional issue. He stated the Executive Committee needs to develop a recommendation regarding sanctions to be imposed on Georgia. Document EC18003 includes the current sanctions, however it does not include the issue regarding the local tax on food in Dekalb county. Diane Hardt, Dan Noble, Tom Atchley and Clark Jolley indicated they would like the sanctions to remain as is. As long as good faith issue exists, Georgia would not be able to vote on amendments to the SSUTA or other state's compliance. Once good faith issue is resolved, if one or more of the other issues still exist, they cannot vote on other state's compliance with the SSUTA. The Executive Committee provided approval for Craig to move forward with new language for the 2019-2020 sanctions.

Status of CSP Contract Discussions

Craig gave an update regarding the CSP contract discussions. He indicated discussions are ongoing regarding the post-Wayfair contract involving state-by-state calculations and a flat rate. The board recognizes the importance of keeping the CSPs on board. Craig stated he received a notice from a state regarding a multi-level marketing challenge which will be brought to the Executive Committee for consideration and a possible vote at the May meeting.

Agenda Items for Upcoming Governing Board Meeting

Representative Kennedy asked the Executive Committee to provide topics for the May agenda which will be noticed next week. Dan Noble asked if there will be an agenda item for secondary membership- yes there will. Mike Walsh stated he would like to see the MLM issue addressed in the agreement.



Executive Director Update

Craig Johnson stated that about 36% of the current SST registrants are using CSPs and receiving compensation. In addition, more and more sellers overall are using CSP services. In 2013, only 15% were using CSP services. We are seeing an increase in the number of sellers registered through Streamlined. Previously, it took two years for us to add 1,000 sellers. Since Wayfair (July 1, 2018), we have had nearly 1800 additional registrants. The more sellers come through, the more sellers there are collecting for your states. The registration system update that allows sellers to pick and choose the states they want to register for has gone live. Mike Walsh asked how many registrants are picking and choosing states. Jody replied that most states getting around 40% of the registrations.

Craig encouraged feedback regarding the new website. Each state has a page, and we are happy to add information at any time. We can also add additional pages if anyone has suggestions.

Upcoming Executive Committee meetings

May 7, 2019 – Providence, RI - Spring in-person meeting
July 26, 2019 – Teleconference – 10 am central
October 2019 – Charleston, West Virginia - Fall in-person meeting
December 13, 2019 – Teleconference – 10 am central
January 11, 2019 – Teleconference – 10 am central

Upcoming Governing Board Meetings

Spring meeting, May 6 – 8, 2019 – Providence, RI
Annual meeting, October 1 – 3, 2019 – Charleston, West Virginia
December 20, 2019 – Teleconference – 10 am central

Old Business

None

New Business

Rep. Gary Scherer who is currently on the Executive Committee will no longer be a delegate for Ohio at the Governing Board meetings. He is being replaced with Rep. Bill Roemer. Therefore, we will need to find a replacement for Rep. Scherer on the Executive Committee. If any state legislator has an interest in becoming part of the Executive Committee, please let Rep. Kennedy and Craig know. The Nominating Committee will be meeting in the near future to discuss and make a recommendation.

Adjournment

The meeting was adjourned at 12:21 pm central.