



Streamlined Sales Tax Executive Committee Meeting Minutes  
Wednesday, May 20, 2020, 10:00 am central  
Teleconference

Call to Order and Roll Call

President Jennrich called the meeting to order at approximately 10:00 am central. The roll of the Committee was called. Present were Tim Jennrich (WA), Diane Hardt (WI), Representative Tim Reed (SD), Michael Walsh (NE), Senator Wayne Harper (UT) Representative Kennedy (RI) Senator Ann Rest (MN), Clark Jolley (OK), Tom Atchley (AR) and Assemblywoman Dina Neal (NV). With ten out of ten members present, the quorum was established.

Review and approve minutes from March 27, 2020 Executive Committee Meeting (EM20002)

President Jennrich asked for comments on the March 27<sup>th</sup> minutes. None were received. Representative Kennedy motioned to approve EM20002. A voice vote was taken and was unanimous. Motion carried.

Federal e-Fairness Related Information – Randi Reid

Randi Reid provided the following update:

Since the U.S. Supreme Court ruled in *South Dakota v. Wayfair* two years ago, states have been implementing the requirements for out-of-state sellers to collect and remit sales tax for transactions made into the state, regardless of any physical presence. States have moved 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. We continue to believe the Streamlined member states are in a very good position based on this decision since they have enacted similar simplification measures to South Dakota, are not applying the law retroactively and adopted small seller thresholds.

During this current Congress, no legislation supporting the collection of sales and use taxes on remote sales has been introduced. Randi does not anticipate a federal bill being pursued in the Congress this year. 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 – in the House or the Senate. Further, the staff for our congressional champions – Congressman Womack, Senators Alexander, Enzi and Durbin – recently confirmed their support for the rights of states to collect out-of-state sales and use taxes that are already owed. 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 Streamlined Sales Tax Governing Board is not advocating for federal e-fairness legislation at this time. Instead, let the Streamlined states continue to 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.



Six bills – four House bills and two Senate bills – have been introduced by e-fairness opponents during this Congress that would proactively prohibit states from applying remote sales tax collection retroactively and/or postpone when the states may begin enforcing collection requirements. At this time, no committee action or floor action has occurred on these specific bills. However, some congressional committees in the House and Senate began public consideration of the Supreme Court *Wayfair* decision’s impact on the business community earlier this year.

On March 3, 2020, the House Small Business Subcommittee on Economic Growth, Tax, & Capital Access held a congressional hearing on “*South Dakota v. Wayfair, Inc.: Online Sales Taxes and their Impact on Main Street.*” The hearing focused on burdens small sellers face with state and local taxes enacted after the Supreme Court’s *Wayfair* decision. The witnesses included: Jamie Yesnowitz, Principal, Grant Thornton LLP, testifying on behalf of the American Institute of Certified Public Accountants (AICPA); Linda Lester, Vice President, K-Log, Inc.; Kevin Mahoney, President and Founder, FindTape.com; and, Brad Scott, Financial Director, Halstead Bead, Inc. No state tax administrator or state legislators were invited to participate in the subcommittee hearing, causing it to be a one-sided hearing and ignoring the perspectives of revenue agencies and organizations coordinating tax policy at the state and local government levels. The Streamlined Sales and Use Tax Governing Board did submit a statement for the record to the subcommittee expressing similar disappointment with the subcommittee hearing and outlining what has been achieved for the business community through the Agreement both pre and post the *Wayfair* decision.

Representatives of the three small businesses told the subcommittee that they are confronting complex tax administration duties. They explained that they are driving our country’s economic engine forward, but often operate with limited staff and resources. The businesses discussed how each of their businesses have reacted to the states’ enactment of sales tax requirements for remote sellers after the *Wayfair* decision. They called on Congress to impose uniform rules across the 45 sales tax states and the District of Columbia.

Subcommittee Chairman Rep. Andy Kim (D-N.J.) sympathized with the businesses and expressed his desire to develop solutions that create more simplicity and predictability for retailers, but he has not introduced a legislative fix to date.

After the hearing, Craig Johnson indicated that the hearing ignored the fact that the states and various segments of the business community begged Congress for help in creating a legal framework for taxing remote sales. Multiple bills were introduced but were never enacted. In the face of congressional inaction, the states pursued sales tax uniformity through the Agreement and litigation to challenge the precedents in *National Bellas Hess* and *Quill*, which eventually led to the *Wayfair* ruling. While the SSUTA states oppose federal intervention, the Governing Board wants to work with small businesses to improve tax registration and collection processes and remove compliance burdens.



The Senate Finance Committee leadership – Chairman Chuck Grassley (R-IA), Ranking Member Ron Wyden (D-OR), and Taxation Subcommittee Chairman John Thune (R-SD) – have previously expressed direct interest in holding a congressional hearing in the Senate Finance Committee about state and local sales tax issues this year. The Senate Finance Committee leadership wants to look at state and local sales tax issues post the *Wayfair* decision in a more comprehensive manner, focusing not only on the Supreme Court decision and state implementation since 2018, but also on potential impact to digital goods and services. Prior to the coronavirus pandemic, the Committee was scheduled to host a full committee hearing in March, but the hearing was postponed. The Committee had invited the Streamlined Sales Tax Governing Board to testify at the hearing. The Governing Board has expressed continued interest to the Committee leadership and its staff in participating in a future hearing once the Finance Committee reschedules it.

This year, the House and Senate appropriations process is expected to get underway in the coming weeks. Like last year, we are closely monitoring the Fiscal Year 2021 appropriations process to ensure that no policy provisions are added that would impede states from requiring out-of-state sellers to collect and remit sales tax for transactions made into the state, regardless of any physical presence.

#### Next Steps

We continue to hear that Congress is monitoring state implementation efforts and we now have recent congressional activity proving this – so it continues to be very important for the Governing Board to continue to consider issues that businesses may bring forward that might be considered undue burdens.

The Streamlined Sales Tax Governing Board will continue to monitor activities on Capitol Hill related to remote sales tax collection for the remainder of the 116th Congress and welcomes the opportunity to testify at any future congressional hearings about state implementation of the sales tax collection on remote sales at the state level. The SSTGB will continue to push back on any activities that might jeopardize implementation of the *Wayfair* decision in the Streamlined states.

#### Formation of workgroup to develop resolution process for issues sellers may be having with certified service providers

President Jennrich noted at the end of last year, the Executive Committee had a closed call and heard about a challenge that a particular business was having with receiving CSP services. The challenges had been escalated to Streamlined due to an inability to resolve issues between the CSP and its client and due to perceived unresponsiveness. This led to a commitment to form a workgroup to explore the potential development of a process to resolve issues sellers have with CSPs. President Jennrich is following up on that prior commitment to kick off the exploratory workgroup, but wants everyone to understand that this is not due to widespread complaints or concerns, but instead an issue that a couple of businesses in particular have raised directly with SST. In moving this workgroup forward, it is hoped we might proactively and collaboratively



explore the issue rather than risk having to react later. Craig Johnson noted a couple of cases we have had to date. This isn't the norm but instead one-off issues that have been brought to Streamlined's attention. We want to do everything we can do to help businesses comply. The businesses have tried to work through the issues with the CSP directly and were unable, so they have reached out to our staff. These issues are not only a reflection on the CSPs, but also a reflection on Streamlined. We need to make sure we have a clear process to follow if there are issues. The purpose of the workgroup will be to consider if we need to develop a more formal process for sellers and states to follow if they have concerns with a certified service provider for issues they cannot resolve internally. We want to make sure the states, business community and CSPs are involved. However at least initially, we will keep the group relatively small. It is anticipated, the initial members of the workgroup will be Fred Nicely and Patrick Reynolds of the BAC, Chad Gill and Brad and Hillary Scott from small business, David Campbell, Scott Peterson and Charles Maniace representing the CSPs, Diane Hardt, Representative Tim Reed, Tim Bennett and Tim Jennrich from the states and Craig Johnson and Jody Bartels of Streamlined. If anyone is interested in joining the group, please email Craig.

### Committee Reports

#### Finance Committee

- 3<sup>rd</sup> quarter financials FC20003 and FYE 6/30/2021 dues proposal

Diane Hardt reviewed FC20003 3<sup>rd</sup> quarter financials ending March 31<sup>st</sup>, 2020. We are in a strong and stable financial condition. We are not having the May in-person meeting. However, we do have an expense that related to the May meeting which we will leave as a pre-paid expense. We may hold a meeting in Tacoma in 2021.

Craig Johnson noted, one line item we are keeping an eye on is Audit Core Team travel. We may need to move some of those funds into the next fiscal year to cover the Core Team travel that was unable to happen this year due to COVID-19. Diane Hardt motioned to approve FC20003. There were no comments received. A voice vote was taken and was unanimous. Motion carried.

Diane Hardt introduced the FYE 2021 dues proposal. Tim Jennrich noted the impact of the current pandemic on the states' budgets. Craig Johnson explained the proposal which would allow for a one-time dues reduction of 50%. Clark Jolley thanked Tim and Craig for their leadership and work on developing this. He is very supportive and appreciative of this effort. Senator Ann Rest motioned to approve the FYE 6/30/21 Dues Proposal. A voice vote was taken and was unanimous. Motion carried.

### Proposed Executive Committee meeting schedule with other special meetings as needed

July 24, 2020 – Teleconference (10 am central)

October 14, 2020 – Annual in-person meeting (Nashville, TN)

December 7, 2020 – Teleconference (10 am central)

January 15, 2021 – Teleconference (10 am central)



### Upcoming Governing Board Meetings

Annual meeting, October 13 – 15, 2020 – Nashville, TN

December 18, 2020 – Teleconference (10 am central)

### Old Business

Final 2020 Sanctions Recommendations EC20001A01

Tim Jennrich noted EC20001A01, which is the final 2020 sanctions recommendations were approved by the Executive Committee in March and they will be considered by the Governing Board during tomorrow's meeting. These are just recommendations to the Governing Board and the Governing Board may or may not ultimately approve these recommendations. President Jennrich asked for comments, none were received.

### New Business

Uniform Law Commission Study Committee – Online Sales Tax Collection

Tim Jennrich stated we have become aware that the Uniform Law Commission has put together a study committee called the "Online Sales Tax Collection Committee". Additional details can be found on the Uniform Law Commission website. The description of the committee is as follows: This committee will study the need for and feasibility of state legislation on state taxation of online sales and collection of taxes. In the 2018 decision *South Dakota v. Wayfair*, the U.S. Supreme Court ruled that the correct standard to determine the constitutionality of a state tax law is whether the tax applies to an activity that has "substantial nexus" with the taxing state, eliminating the requirement that businesses must be physically present in a state before their sales can be taxed. Many states are looking for guidance to address the *Wayfair* decision.

Craig Johnson stated he will be participating in the meetings and encourages others that have an interest to take a look at it. Craig and Tim will be monitoring the activities and will keep people posted as they learn more.

### Adjournment

Rep Brian Kennedy motioned to adjourn at 10:57 AM Central.

