



Streamlined Sales Tax Governing Board Meeting Minutes  
Wednesday-Thursday, October 5-6, 2022  
Holiday Inn and Suites, Nashville, TN

Call to Order and Roll Call

President Jennrich called the meeting to order. The roll of the states was called. With 22 full member states present, and one associate member state, the quorum was established. Absent was Vermont.

Opening Remarks

President Jennrich opened the meeting and introduced Commissioner David Gerregano who provided the welcome.

President Jennrich and Craig Johnson also welcomed everyone to Nashville. This meeting marks the 20<sup>th</sup> Anniversary of the initial passage of the SSUTA.

Review and approve minutes from May 24-25, 2022 (MM22003)

President Jennrich stated the minutes from the May meeting had been posted to the website and a link added to the agenda. He asked for a motion to approve the minutes. Representative Reed provided the motion. No comments were received. A voice vote was taken and was unanimous. Motion carried.

Election of Officers and Directors for 2023 (NC22001)

President Jennrich stated a single slate of candidates to serve as Officers and Directors for 2023 was developed by the Nominating Committee. He walked through the slate as shown on NC22001. All candidates indicated they are willing to serve. Representative Kennedy motioned to approve NC22001. No comments were received. A voice vote was taken and was unanimous. Motion carried.

Election of Nominating Committee for 2023 (NC22002)

President Jennrich stated a single slate of candidates to serve on the Nominating Committee for 2023 was developed by the Nominating Committee. He walked through the slate as shown on NC22002. All candidates indicated they are willing to serve. Mike Walsh motioned to approve NC22002. No comments were received. A voice vote was taken and was unanimous. Motion carried.

Reports of Committees

Finance Committee – Richard Dobson (KY)

Richard Dobson provided the Finance Committee report. Richard reviewed FC22003 which is the 4<sup>th</sup> quarter financial report. Richard motioned to approve FC22003. No comments were received. A voice vote was taken and was unanimous. Motion carried.



Richard then moved on to FC21005A03 which is the FYE 2023 budget amendment. Richard and Craig highlighted some of the changes. Richard motioned to approve FC21005A03. No comments were received. A voice vote was taken and was unanimous. Motion carried. Richard then reviewed FC22004 which is the FYE June 30, 2024 proposed budget. Richard motioned to approve FC22004. No comments were received. A voice vote was taken and was unanimous. Motion carried.

Richard then reviewed rule amendment RP22003A01 related to Finance Administration policies, various authorization requirements, etc. It was reviewed and discussed in detail at the Executive Committee earlier in the day. Richard motioned to approve rule amendment RP22003A01. No comments were received. A voice vote was taken and was unanimous. Motion carried.

#### Compliance Review and Interpretations Committee – Craig Johnson

Craig Johnson provided the CRIC report. Craig stated we had 19 states with no compliance issues noted and no public comments received. The states are AR, IN, IA, KS, KY, MI, MN, NE, NC, ND, OH, OK, RI, SD, UT, VT, WA, WI and WY. Representative Kennedy motioned to find the 19 states not out of compliance. No comments were received. A voice vote was taken and was unanimous. Motion carried.

Craig stated there was one issue identified with respect to New Jersey and that was they had a sales tax holiday and did not provide the required 60-day notice. The sales tax holiday has already come and gone by the time of the compliance review. CRIC voted to find New Jersey not out of compliance recognizing they will rectify the issue in the future. Fred Nicely stated the BAC is frustrated by this finding and they really want to emphasize that the 60-day notice is very important to the business community. Richard Dobson motioned to find New Jersey not out of compliance. No comments were received. A voice vote was taken and was unanimous. Motion carried.

Christie stated that a couple of issues were identified with respect to Tennessee. The first issue is related to Tennessee's sales tax holiday for gun safes and gun safety devices. "Gun Safes" and "Gun Safety Devices" are not defined terms under SSUTA section 322.A.1. and therefore are not eligible to be covered by a sales tax holiday. In addition, the Tennessee legislature enacted a sales tax holiday for food and food ingredients starting August 1, 2022, and ending August 31, 2022. Notice of the enactment was issued 58 days prior to the start of the holiday, instead of the required 60 days. Craig stated that as an associate member state, these items do not affect the state's compliance, but would affect it if it were a full member. Fred stated the BAC had discussion and they would like to see guns and gun safes be defined since this issue may impact other states in the future. Mike Walsh motioned to find Tennessee not out of compliance as an associate member. No comments were received. A voice vote was taken and was unanimous. Motion carried.



Craig stated the same issues that Georgia is currently being sanctioned for continue to exist. Georgia has four issues, and these are the same four issues that have created compliance issues for Georgia over the last several years: 1) In 2012 after Georgia became a member, their legislature re-instated a good faith acceptance requirement on sellers when they accept exemption certificates. This is prohibited under Section 317.C of the SSUTA. This will require a legislative change by Georgia to correct this issue. 2) Georgia only accepts SERs for Model 1 Sellers and does not accept them from Model 4 or other sellers as is required under Section 318. The Governing Board approved amendments to the SSUTA in October 2019 to address one of the reasons Georgia does not accept the SERs which is because of the variations allowed in Sections 302 and 308 between the state and local tax base and rates to help address these issues, but Georgia has not made the revisions to correct this. 3) Georgia imposes a \$35,000 cap on boat repairs which is not allowable under Section 323.A. of the SSUTA. This will require a legislative change to correct this issue. 4) Exemption from tax on food from one of their local option sales taxes which is not allowable under Section 308 of the SSUTA – this will require a legislative change by Georgia to correct this issue. Richard Dobson motioned to find Georgia not in compliance. No comments were received. A voice vote was taken and was unanimous. Motion carried. Fred Nicely stated COST is trying to work with Georgia to see if any of these issues can be resolved.

Christie explained Nevada's compliance issue is related to a sales tax holiday that is administered as an entity-based exemption, which is prohibited under section 322. Guy Childers indicated they understand the issue, which is the same as last year and could not be corrected because their legislature was not in session. Guy stated it is out of the department's hands and will require a legislative change. He indicated that his understanding is that they plan to rectify the issue the next time the legislature is in session. The BAC reported they look forward to working with Guy and Senator Neal to remedy the situation. Lance Wilkinson motioned to find Nevada out of compliance. No comments were received. A voice vote was taken and was unanimous. Motion carried.

Christie reviewed the item CRIC found that West Virginia was not in compliance with which is related to the taxation of streaming services. Mark Morton of West Virginia reviewed the letter that was sent to Craig stating they don't believe they are out of compliance. Senator Harper stated SLAC's vote was split. He stated that Mark summarized this fairly - they believe they are enforcing an existing statute, as it has always been taxed. He asked Mark if something has changed. Mark stated the *Wayfair* decision has made this an issue since streaming is coming from an interstate source. Fred of the BAC agrees with Mark that WV has a broad tax on services. The BAC isn't looking at whether or not WV's laws impose a tax on streamlined services, but instead is saying that if they want to impose tax on these streaming services, they need to meet the specific requirements contained in Section 332 of the SSUTA. They need to have a specific statute to say they are imposing tax on non-permanent use and address the continued payments issue. The BAC isn't necessarily looking for WV to be penalized, but they want the West Virginia legislature to know they are not in compliance with the SSUTA. Richard



Dobson motioned to find West Virginia not in compliance with Section 332 of the SSUTA. A voice vote was taken but was not unanimous, so roll was called. With 15 yes votes (AR, IN, IA, KY, MI, MN, NJ, NC, ND, OH, OK, SD, WI, KS, TN) and 6 no votes (NE, NV, RI, UT, WA, WY) the motion failed. Vermont was absent. West Virginia was not found out of compliance. Craig explained that Section 805.1 of the SSUTA provides that for a motion to pass to find a state out of compliance, it requires the affirmative vote of  $\frac{3}{4}$  of the entire Governing Board, except that the state that is the subject of the motion is not eligible to vote. The entire Governing Board is made up of 24 states less the one state that is the subject of the motion (WV). Three-fourths of 23 states is 17.25 which means 18 states must vote in the affirmative. Although the SSUTA does not explicitly indicate that GA should be excluded from the count, if you exclude GA due to its sanctions, three-fourths of 22 states is 16.5 which means 17 states must vote in the affirmative and the motion still fails. Finally, if you also exclude TN from the vote because they are an Associate member state, three fourths of 21 states is 15.75 which means 16 states must vote in the affirmative and the motion still fails. (Note: If TN is excluded the number of yes votes would also need to be reduced by 1 since TN voted yes so only 14 states would have voted yes.)

#### Audit Committee –Rachel Williams (SD)

Rachel Williams provided the Audit Committee Report. She stated they continue to meet monthly with each individual CSP to address any outstanding issues that may exist. The committee is making changes to the contract compliance audits as they are entering the new contract period. They have added new core team member - Angelia Sykes from Kentucky. The core team is also preparing for the upcoming contract compliance audits and the Audit Training which will be held in March. They continue trying to make data more manageable due to file sizes.

#### Panel Discussion – Streamlined The Early Days – How and Why Streamlined Started

Loren Chumley, Charles Collins, Sherry Hathaway, Bruce Johnson, Doug Lindholm, Harley Duncan and Warren Townsend presented.

Brief summary: The panel discussed the early days of Streamlined, some of the challenges they faced, the need for the states and the business community to work together and really understand each other's positions and reasons for those positions. It was very important early on to not lose sight of the objective which was to make things as simple and uniform as possible. Working together collaboratively and communication was key to getting the initial draft of the SSUTA completed. It is also important for the group to continue to work together.

Craig thanked the panel participants for their willingness to participate in the meeting and share their experiences as many of the folks attending now were not around when the SSUTA was first being developed.



### Panel Discussion – The Continued Importance of Streamlined

Scott Peterson, Richard Dobson, Fred Nicely, Wayne Harper, Stephen Kranz and Representative Brian Kennedy presented.

Brief summary: This panel discussed why Streamlined is still relevant and still important. The *Wayfair* decision recognized Streamlined's work and noted various items that South Dakota did as a member of Streamlined that appeared to remove undue burdens on and discrimination against interstate commerce. The panel stressed that the Supreme Court did not rule on the constitutionality of South Dakota's laws and the question of what constitutes an undue burden still exists.

The panel also discussed the continued importance of Streamlined and the member states working together to address issues as the sales tax system continues to evolve. The issues surrounding digital goods are coming to light and finding a solution that works from both the state and local governmental perspective and the business perspective is very important.

Craig thanked the panel participants for the willingness to participate and share why they still see Streamlined as relevant and important and stressed the need for the states and the business community to continue to work together and resolve issues as the system evolves.

### Adjournment

The meeting was continued to 10/6.

### Call to Order and Roll Call

President Jennrich called the meeting to order. The roll of the states was called. With 20 full member states present, and one associate member state, the quorum was established. Absent were Arkansas, Vermont, and West Virginia.

### Continuation of Committee Reports

State and Local Advisory Council – Christie Comanita (SST), Dave Matelski (MI) and Merry Hopkins (MN)

Christie Comanita provided the SLAC report. She highlighted the current workgroups- Exemption Certificate Disclosed Practices, Digital Goods, Marijuana Products and stated she received an inquiry regarding candy, so SLAC is looking at starting a workgroup to review Appendix N.

Regarding Digital Goods, Tim Jennrich stated we would work on a response to the BAC memo that addresses the sourcing issues if you only have a 5-digit zip code. We will also survey the states and identify which states will allow just a 5-digit zip and would provide liability relief if that is all that is needed to complete the transaction. Pat Reynolds stated we should have a discussion regarding scope and what the size of the problem is. Tim Jennrich stated that he agrees we should discuss solutions and scope. Russ Brubaker stated he has worked with three



different states to figure out scope and asks other states to get involved with that as well. It would be important to know the scope before we look at solutions. Craig indicated that although he doesn't have a problem with people trying to determine the scope of the problem, he pointed out that even if the scope is small in the grand scheme of tax collections, if the issue affects all or nearly all of the transactions of a particular seller, then for that seller the issue will be extremely important and we need to develop clear language that works for both the states and the sellers because right now, based on discussions with various individuals, there appear to be differing opinions as to what the SSUTA requires and doesn't require on this issue.

Dave Matelski then moved on to the discussion and disclosed practices related to exemption certificates. The documents were all reviewed in detail during the SLAC meeting and various changes were made. Dave asked if people wanted him to go through all of the documents in detail or just the changes. Dave indicated he would review the changes from the version that was noticed and if anyone had any other questions or comments to stop him at any point in time. Dave reviewed the changes to the documents that were made during the SLAC meeting. The revisions were shown in documents SL22010A04, RP22004A01 and RP22005A01. Richard Dobson motioned to approve the changes to SL22010A03/AM22003A01 as shown in SL22010A04/AM22003A02, which was available online and shown on the screen. A voice vote was taken and was unanimous. Motion carried.

Mike Walsh then motioned to approve AM22003A02. A comment was received regarding when states would be expected to have these disclosed practices completed. Craig indicated that it depends on whether the second vote will be waived as to when SST staff and the programmer would be able to have the documents available for completion by the states. Under Section 335 of the SSUTA, states are supposed to complete the disclosed practices by the first day of the calendar month that is at least 60 days after the date the Governing Board approves the disclosed practices or another date set by the Governing Board. If a second vote is taken in December, that would mean states have until March 1, 2023 to complete the matrix. States were concerned that that date would be in the middle of their legislative sessions and could be challenging. Fred Nicely and others indicated that the product of this workgroup and the disclosed practice contains important information and he would like states to get it out as soon as possible. Some suggested that states should have until the time the documents are due for the next compliance review (August 1, 2023). The business community said that is a long time to wait and wanted it sooner.

Laura Stanley suggested a friendly addition to Mike's motion to accept the changes, waive the second vote, and for states to have the documents completed by March 31, 2023 and allowing each state to be granted an automatic extension to August 1, 2023, by submitting written notice to the Executive Director. Mike Walsh accepted the friendly amendment to the motion. A voice vote was taken and was unanimous. Motion carried. Fred and others reiterated their request that states please get as much of this information out as soon as possible.



Mike Walsh motioned to accept changes to the rule amendments RP22004A02 and RP22005A01. No discussion. A voice vote was taken and was unanimous. Mike then motioned to approve the documents as amended. No discussion. A voice vote was taken and was unanimous. Motion carried. Richard Dobson motioned to waive the second vote on the tax matrix and admin practices. A voice vote was taken and was unanimous. Motion carried.

Craig thanked the SLAC workgroup, Christie and the business community for their work on this project. It was a big project but should prove to be very useful to the business community. It should also help states provide more consistent answers when they are contacted with questions.

Christie stated she received an email regarding specific product items that are listed in Appendix N – Candy rule. When it was adopted, Appendix N gave examples of items with flour and without flour. There are items listed that now have flour, that didn't previously. She went through and did updates to the document. She asked if SLAC should review the documents to make sure any changes or interpretive decisions are properly reflected and if the products listed are correct. She drafted a work request asking for a workgroup to be formed to complete this review. Representative Reed motioned to approve starting an Appendix N workgroup. A voice vote was taken and was unanimous. Motion carried. Christie will be sending an email to ask for participation.

#### Certification Committee – David Kolb (IN), Chair

David Kolb provided the Certification Committee report. He reviewed the changes in the technology manual shown in MC22003. Guy Childers motioned to approve the changes to MC22003. A voice vote was taken and was unanimous. Motion carried.

#### Multistate Tax Commission – Digital Goods Project – Helen Hecht

Helen Hecht reported on MTC's Digital Goods project and the coordination with Streamlined.

#### Status of Federal Legislation and Federal Activities – Randi Reid

Randi Reid and Alison Martin provided the Federal Activities update. Alison was the former legislative director for Senator Lamar Alexander (TN) who was one of the former Senate champions trying to get the marketplace fairness act enacted at the federal level.

#### Business Advisory Council Update and Issues to Discuss

Russ Brubaker spoke on behalf of the BAC, and thanked Carolyn Kranz for her leadership. They have new officers - Russ Brubaker, President, Brandi Drake, Vice President, Jessie Eisenmenger, Treasurer and Al Babbitt, Secretary. Russ thanked the SLAC chairs for the work they have done. They look forward to working with the Governing Board to come up with reasonable solutions to some difficult problems they may face in the future.

#### Certified Service Providers Update and Issues to Discuss



The NACSPs had no comments.

Old Business

None

New Business

None

Adjournment

President Tim Jennrich asked for a motion to adjourn at 11:12 AM Central (Richard Dobson provided).