

SST Board Adds Georgia, Lobbies Congress, Debates General Amnesty

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The Streamlined Sales Tax (SST) Governing Board accepted Georgia as a full member, and considered approving a new, general amnesty for voluntary registrants, during its meeting in Arlington, Virginia, on May 18. This was the board's annual spring meeting during which the state delegates lobby members of Congress and their staff for passage of federal legislation authorizing remote-sales collection authority. The meeting was set against a backdrop of increasing challenges for the group as it faces growing impatience with a lack of progress in Congress, the potential that members may go out of compliance with the SST Agreement, and a trend toward "click-through" nexus and similar approaches as alternatives to the SST effort. The State and Local Advisory Council (SLAC) and Issues Resolution Committee also met in Arlington on May 17.

Governing Board President Indiana state Sen. Luke Kenley announced that the board's Executive Committee had met with the Business Advisory Council (BAC), and participants agreed that the group needs a more effective strategy on Capitol Hill. Sen. Kenley said that he will spearhead that renewed effort. He added that the "Amazon laws" advocated by some members of the business community are "only a partial solution" to the states' collection efforts. Sen. Kenley also said the group will revive its former practice of preparing issue papers on subjects before the board in order to create a more "collaborative" process with business representatives. He stated that the board has not progressed yet on plans to re-litigate Quill, 504 U.S. 298 (1992), and no legal counsel has been retained by the board. However, Sen. Kenley said he plans to begin to focus on this part of the board's dual strategy for obtaining collection authority.

Georgia Petition Accepted

Georgia's petition to become a full member on August 1, 2011, was accepted by the board without dissent. Consequently, there will be 21 full members and 3 associate members. Georgia became an associate member on January 1, 2011, and recently enacted legislation necessary to bring it into full conformity with the Agreement. Georgia's current sales and use tax amnesty for sellers registered under the Agreement remains in effect for 12 months from the time it becomes a full member.

General Amnesty Under Consideration

The Agreement currently requires that a state provide an amnesty to qualifying sellers for 12 months after the state becomes a full member. An associate member state must provide an amnesty from the time it becomes an associate member until 12 months after it becomes a full member. Potential new registrants, who must collect for all full members, have expressed concerns about their liability in those states in which the amnesty has expired. Moreover, certified service providers (CSPs) are having difficulty recruiting new registrants because of the lack of amnesty as an incentive.

In response, Governing Board First Vice President Russ Brubaker, Washington State Department of Revenue, asked the board to consider offering an amnesty to all voluntary registrants in all member states that would last until the states are granted federal collection authority. Alternatively, he said the board could offer the amnesty only to those voluntary registrants using a CSP. Charles Collins, ADP Taxware, applauded the proposal, saying it would increase the states' collections and maintain the visibility of the SST effort while the group awaits federal legislation. Bruce Johnson, Utah State Tax Commission, agreed. He said that many small taxpayers who are thinking about registering may incur more costs negotiating voluntary disclosure agreements with the states that no longer offer an amnesty than they would owe in tax.

The proposal was referred to the Executive Committee for further analysis.

Federal Bill Awaiting Sponsors

Federal legislation to grant states collection authority over remote sellers in return for sales tax simplification has yet to be introduced in the current Congress. As in past years, participants at the SST meeting took time to lobby on Capitol Hill for support of the draft legislation, tentatively titled the Main Street Fairness Act. The board hopes the bill will be introduced in the U.S. Senate as soon as additional Republican cosponsors can be found. Sen. Mike Enzi, R-Wyo., has been a strong supporter in the past and is likely to join Sen. Richard Durbin, D-Ill., in sponsoring any bill. Sen. Lamar Alexander, R-Tenn., a former governor, is another potential Republican sponsor. Support among Democratic senators is considered strong. The board expects greater opposition in the House of Representatives, but its

strategy calls for inserting the authority into another piece of legislation with wider support in that body. President Obama has indicated he would sign the legislation.

Utah state Rep. Wayne Harper and Utah state Sen. Curtis Bramble said they hope to win support from their state's two Republican senators: Sen. Orrin Hatch and Sen. Mike Lee. Sen. Bramble said that in discussions with Sen. Hatch he framed the issue as one of states rights, and pointed out that any additional revenue from the enhanced enforcement of existing laws could be used to reduce the state's existing tax rate. Sen. Hatch was "receptive" but noncommittal, and mentioned that he has heard from many eBay members who oppose the legislation. South Dakota state Sen. Deb Peters said she used aggressive arguments on the Hill, characterizing non-collection as "tax evasion."

Neal Osten, National Conference of State Legislatures (NCSL), said state legislators in member states need to be "educated" to avoid enacting legislation that takes the state out of conformity with the Agreement. Meanwhile, he added that the NCSL would support tying federal collection authority to other federal bills on state taxing authority, if necessary, because remote-sales collection would bring in far more revenue than any of the other proposals would cost states.

Action Deferred on Communications Services Taxes

The board deferred any action on a motion to amend the Agreement to allow a member state to petition the board for a finding that the state has applied all of the provisions of the Agreement (except for those specifically excluded in the amendment) to a tax on communications services. This action by a state would be voluntary and not a condition of membership. The amendment was prepared, in part, in anticipation of a federal requirement that states, in return for collection authority, extend provisions of the Agreement to transaction-type taxes on communications services not otherwise covered by the Agreement. However, it was announced that the prime sponsor of draft legislation in the U.S. Senate currently is not planning to include this requirement in the federal bill. Work on the issue will continue, nonetheless.

A SLAC work group is trying to identify which taxes on communications services would be covered by any amendment. At the request of Utah's Bruce Johnson, the states and business representatives will try to create, within the next two months, a list of all taxes subject to any proposed simplification mandate.

Other Board Actions Taken

The board took action on a number of proposals on its agenda, including the following.

An interpretive rule was approved that employee incentive program credit is not a discount and is included in total consideration for purposes of the definition of "sales price." An employee discount that is not reimbursed by a third party is a discount and is not included in "sales price." This rule is intended to resolve a long-standing conflict among the member states. Motions for alternative resolutions were withdrawn.

An interpretive rule was approved sourcing a personal care service to the location where the service is received by the purchaser.

An interpretive rule and related schedule were approved intended to clarify the "candy" definition.

Amendments to procedural rules were approved updating compliance audit procedures and making non-substantive changes to the certification process.

A motion was referred to the SLAC to amend the rules construing prepaid calling service definitions.

A motion was deferred to amend the Agreement relating to netting audit overpayments on purchases.

SLAC Actions Taken

The SLAC continues work on the specific wording of an amendment to a rule clarifying that a seller is relieved of liability if it obtains an exemption certificate containing all of the data required by the Agreement, even if additional state-specific information is not completed.

The SLAC also continues work on a proposed amendment to the definition of "sales price" and a related rule that would allow a state to exclude a separately stated tax that is imposed on the seller that the seller may, but is not required to, collect from the consumer. Separately, the SLAC is working to identify other issues around the definition of "sales price" that the board may ask it to examine,

including the taxation of vouchers offered by entities such as Groupon and LivingSocial.

Finally, the SLAC left for further consideration a proposed rule requiring that member states, as a condition of being in compliance with the Agreement, have a statute, rule, or written policy requiring liability relief for a failure to provide at least 30 days' notice of a rate change. Utah's Bruce Johnson said he failed to understand how a state could be held out of compliance for failing to explicitly prohibit something it had never done. He suggested as an alternative approach that the annual certification process include a check to see if a state had, in fact, enacted a rate change with less than 30 days' notice. Although no vote was taken, Johnson's suggestion seemed to receive general approval.

Issues Resolution Committee Meets

The Issues Resolution Committee held its first in-person session to hear arguments in the BAC's petition to have Nebraska found out of compliance with the Agreement for allegedly taxing electronic mailing lists as "tangible personal property." In the quasi-judicial hearing, the BAC was represented by Fred Nicely, Council On State Taxation, and Nebraska was represented by Tom Gillaspie, Nebraska Department of Revenue. The committee will issue its recommendation within 60 days. The Governing Board will have 60 days after that to take action on the recommendation.

The next in-person meeting of the Governing Board and the SLAC will be in Seattle, October 4-6, 2011.

Streamlined Sales Tax Governing Board and State and Local Advisory Council Meetings, Arlington, Virginia, May 17-18, 2011