

IOWA STREAMLINED SALES TAX ADVISORY COUNCIL

2010 Report to the

IOWA GENERAL ASSEMBLY

January 13, 2011

Council Created; Council Charge

In 2003, House File 683, Section 204 created the Iowa Streamlined Sales Tax Advisory Council. (Please see Appendix A for a list of members as of 12/31/10). The Streamlined Sales Tax Advisory Council was codified in statute at Iowa Code §423.9A in 2006. The Council reviews, studies, and submits recommendations regarding the Streamlined Sales and Use Tax Agreement (SSUTA).

Meetings

The Council met one time this year, on October 22, 2010. The meeting was held at the Iowa Department of Revenue in the Hoover State Office Building in Des Moines. Members are also able to participate remotely by telephone. Various issues were discussed at the meeting. A copy of 2010 meeting agenda is attached to this report as Appendix B and minutes of the meeting are attached as Appendix C. This information may also be viewed at:

http://www.iowa.gov/tax/taxlaw/SLSTmeeting_agenda_minutes.html.

Significant Developments

In 2010 the Streamlined Governing Board continued to address a number of issues related to the passage of federal remote sales legislation. The Governing Board adopted several amendments to the Agreement in anticipation of the passage of federal legislation. These include a requirement to provide compensation to all retailers, an exemption to participation for “small sellers,” and bonus compensation for new remote sellers. These amendments would not be effective until federal legislation is passed (See Appendix D for a copy of the vendor compensation, small seller, and bonus compensation amendments). Vendor compensation is an issue that will need to be addressed since Iowa has no legislation providing compensation to retailers. Because compensation will require legislation, Iowa abstained during related votes.

The Governing Board also amended the Agreement to address uniform sourcing of services. Compliance with this amendment will require a legislative change. The uniform sourcing language provides that services are sourced to the location of the first use of the service. Iowa currently sources services to the location the service was actually performed. In the majority of instances, the two locations are the same, but there will be some differences in the sourcing of certain taxable services. The Department will submit a proposed bill to the 2011 Legislature in order to effect this change. If passed, the Department will also promulgate rules to implement the statutory change.

Compliance Issues

The Department submitted its annual taxability matrix and certification of compliance to the Governing Board. The Governing Board then conducted its yearly recertification exercise to ensure member states are in conformance to the Agreement. Iowa was found by the Governing Board to be in compliance. This finding was based in part on the Department’s commitment to address with the 2011 Legislature the issue of one-way paging services. Currently, the

Department's rule indicates that one-way paging is not a taxable service. 701 IAC 18.20. The SSUTA definition of paging includes both one-way and two-way paging services. Iowa taxes two-way paging service but not one-way paging service which causes a conflict with the Agreement. The Department believes there are few if any instances of telecommunications companies selling one-way paging services on a stand-alone basis.

Updated Information

Iowa Code § 423.9 (3) authorizes four individuals to serve as Iowa's representatives on the Governing Board. One is to be a Representative and is appointed by the Speaker of the House. This position has been filled by Representative Christopher Rants. With his retirement, the incoming Speaker will need to appoint a new Representative to serve on the Governing Board. One representative is to be a Senator and Senator William Dotzler serves in this capacity. Two of Iowa's representatives are from the Executive Branch, one of whom is the Director of Revenue. Tax Policy and Audit Services Manager Victoria Daniels serves as the other Executive Branch representative.

As of December 31, 2010, there were 1,350 registrants in the streamlined project. Currently, 180 are model 1 sellers and use certified service providers (CSP) and 1170 are model 4 sellers and calculate and submit their own taxes. This represents an increase of 150 registrants during 2010.

The Council and the Iowa Department of Revenue participated in the annual streamlined sales tax meeting and activities. Council members Senator William Dotzler, Dale Busacker, and Victoria Daniels participated in the annual streamlined sales tax meeting in Indianapolis.

Pending Issues

The Council would like to draw the General Assembly's attention to the following issues as the streamlined process moves forward this year:

Sourcing Services. Workgroups involving the State and Local Advisory Council and Business Advisory Council to the Governing Board continue to meet to address drafting general rules for sourcing of other taxable services.

Additional Remittances. The State and Local Advisory Council and Business Advisory Council are addressing the issue of states requiring semi-monthly remittances for larger retailers. Iowa currently requires semi-monthly remittances, but only from our larger in-state retailers.

Local Communication Taxes. The Executive Committee continues to review the issue of other taxes on communications services that fall outside or conflict with terms already defined by the Agreement. Included in the current proposed amendment would be a compensation requirement for taxes collected on remote type sales.

Legislation Required

As noted previously, the Department will propose legislation to keep Iowa in conformance with the Agreement. Passage of this legislation is required to maintain conformance with the Agreement. This legislation will be submitted to the General Assembly and Governor under separate cover. Also, the General Assembly should anticipate annual streamlined legislation in the future.

Statutory Responsibilities Discharged

With submission of this report, the Council fulfills its reporting obligation as charged in Code Section 423.9A. The Council will continue to meet and communicate with the Governor and General Assembly. At the conclusion of 2011, it will file its eighth annual report.

APPENDIX A

IOWA STREAMLINED SALES TAX ADVISORY COUNCIL

Members on December 31, 2010

Mark R. Schuling, Chair
Iowa Department of Revenue
Des Moines, IA

Victoria Daniels
Iowa Department of Revenue
Des Moines, IA

Senator William Dotzler
State Senate
Des Moines, IA

Jerry Fleagle
Iowa Grocery Industry Association
Des Moines, IA

Jim Henter
Iowa Retail Federation
Urbandale, IA

Dick Koberg
Dica Marketing
Panora, IA

Ann Stocker
Cargill
Eddyville, IA

Chris Theisen
Theisen's Home-Farm-Auto Stores
Dubuque, IA

Warren D. Townsend
Wal-Mart Stores, Inc.
Bentonville, AR

Ed Wallace
Iowa Taxpayers Association
Des Moines, IA

Dave Krutzfeldt
Interpower Corporation
Oskaloosa, IA

Ross Larson
Colorfx, Inc.
Des Moines, IA

Marc Michaelsen
Casey's General Stores, Inc.
Ankeny, IA

Monti Miller
The Learning Post
Des Moines, IA

Representative Christopher Rants
House of Representatives
Des Moines, IA

Stephen W. Roberts
Davis, Brown, Koehn, Shors & Roberts PC
Des Moines, IA

Michael C. Rubino
Deere & Company
Moline, IL

Dale Busacker
Grant Thornton
Minneapolis, MN

Jay Turner
Electrical Engineering & Equipment
Des Moines, IA

Kristin Kunert
NFIB/Iowa
Des Moines, IA

APPENDIX B

IOWA STREAMLINED SALES TAX ADVISORY COUNCIL

October 22; 10:00 A.M.

Hoover State Office Building
4th Floor Conference Rooms
Des Moines, Iowa

Agenda

- I. Welcome & Opening Comments –Mark Schuling
 - A. New Member -- Kristin Kunert
- II. National Meetings in Indianapolis, IN (October 5 – 7, 2010)
 - A. BAC Update -- Dale Busacker
 - B. Federal Legislation/Vendor Compensation – Victoria Daniels/Larry Paxton
 - C. Small Seller Exception – Victoria/Larry
 - D. Sourcing Services – Victoria/Larry
 - E. Carbon Dioxide – Victoria/Larry
 - F. Candy – Victoria/Larry
 - G. Additional Remittances – Victoria/Larry
- III. Certificate of Compliance and Taxability Matrix/Annual Recertification – Victoria
- IV. Update on Legislation & Rules – Victoria
- V. Update on Registration & Revenue Tracking – Larry
- VI. Future Streamlined Sales Tax National Meetings
 - A. Monday November 1, 2010 (Conference Call only)
 - B. Week of May 15th, 2011, Washington, D.C. (no federal legislation has passed)
- VII. Set Next Advisory Council Meeting -- All
- VIII. Adjournment

APPENDIX C

Iowa Streamlined Sales Tax Advisory Council Meeting Minutes
Hoover State Office Building
October 22, 2010

Members Present: Mark Schuling, Victoria Daniels, Ed Wallace, Ann Stocker, and Marc Michaelson. Those members joining via telephone: Dave Krutzfeldt, Dale Busacker, Kristin Kunert, Dick Koberg, and Jerry Fleagle

Others present: Jim Miller, A.G.; Larry Paxton and Diane Stoecker, IDR staff

I. Welcome & Opening Comments – Mark Schuling

Mark opened the meeting at 10:03 A.M.

A. New Member – Kristin Kunert

Mark welcomed Kristin to the Advisory Council. Kristin is the state director of the National Federation of Independent Business. Kristin introduced herself to the Council.

II. National Meetings in Indianapolis, IN (October 5-7, 2010)

A. BAC Update – Dale Busacker

Dale updated the Council on a couple of items that were covered at the BAC meeting but were not listed as topics to discuss today.

- BAC has heard that the Executive Committee decided to look for a test case for Quill. BAC is troubled by this development.
- The State of Georgia has submitted a petition for membership application.
- Credit for taxes in a second state when paid to other states for both state and local tax bases are different.
- Simplifying communications taxes.

B. Federal Legislation/Vendor Compensation – Victoria Daniels/Larry Paxton

Victoria and Mark highlighted federal legislation for the Council. Work continues on methods for determining compensation to all sellers in anticipation of action by Congress that would grant states the authority to require remote sellers to collect sales and use tax.

Some states currently compensate sellers; Iowa does not.

Compensation is based upon amount of taxes remitted per seller per month. The first tier provides a higher rate of compensation for “small sellers.”

BAC objected to the current proposal for vendor compensation because the rates were too low based on the cost of business study. One other point made was this is vendor compensation on sales; not on goods consumed.

Victoria explained Jerry Johnson’s tax collection projections.

The currently proposed federal legislation contains placeholder language for vendor compensation. If the federal government passes this legislation in a lame-duck session, non-compensating states will have to comply or they will be out of compliance with SSUTA. Dale asked Mark about the Iowa Legislature. Mark indicated we would inform them of the possibility of federal legislation. We would have to pass legislation in order to begin compensating vendors and thus remain in compliance.

C. Small Seller Exception – Victoria/Larry

The Governing Board’s proposed small seller exception defines a small seller as one with less than \$100,000 in annual sales. BAC’s resolution specifies a \$500,000 in remote sales threshold for the small seller exception.

Larry indicated that Amazon supported the \$100,000 threshold because they already have a system in place.

D. Sourcing Services – Victoria/Larry

Larry provided a handout on how Iowa currently sources taxable services. Diane will distribute to the Council via e-mail. The Department’s perspective is that Iowa needs to revise current definitions to be in strict compliance with the agreement.

There is a workgroup that is trying to address the issue of sourcing taxable services. Victoria is co-chairing the workgroup. Dale Busacker commended Victoria for stepping up and taking part in the workgroup. Ed Wallace seconded and asked that it be noted in the minutes.

E. Carbon Dioxide – Victoria/Larry

The Compliance Review and Interpretation Committee ruled that a company’s sales of refill canisters of beverage-grade carbon dioxide for use in a table-top soda making system, qualify as sales of “food and food ingredients” as that

phrase is used in the SSUTA. The Governing Board adopted CRIC's recommendation. Iowa was supportive of this interpretation.

F. Candy – Victoria/Larry

A State and Local motion to adopt a rule relating to the definition of food & food ingredients and candy was made by Wisconsin & Minnesota. Victoria noted the primary issues are flour and the form of candy, i.e., bars, drops or pieces. The workgroup addressing this issue is mainly trying to nail down a definition of flour. Should "flour" include all types of flour and not just wheat flour (e.g. Peanut flour, cocoa flour, etc.)? If the workgroup decides to delineate all the different types of flour; Iowa will need a rule change.

BAC also has a working group.

Jerry Fleagle wants to be kept apprised of issues such as these.

G. Additional Remittances – Victoria/Larry

Iowa requires semi-monthly remittance for in-state sellers only. BAC is concerned about inconsistencies among states on how these remittances or "prepayments" are handled.

BAC stated that the purpose of SST is to reduce the burden on sellers. BAC wants standardized, uniform rules that states have to follow which would truly simplify things for the sellers.

H. Communications Amendment (OK & WA) part of federal legislation. Larry was not sure it was a big issue for Iowa but amendment does have compensation to telecommunication and utilities.

III. Certificate of Compliance and Taxability Matrix/Annual Recertification – Victoria

CRIC's review indicated Iowa had three potential compliance issues.

1. There is no provision for relief of liability if a state rate change takes effect in less than 30 days.
2. It appears that the base for the local tax is slightly different from the state base. Sales of tangible personal property by the Department of Transportation are excluded from the local base, but a similar exclusion or exemption was not found for the state base.
3. Rule 701-18.20(7)(d)(3) includes one-way paging as a non-taxable service. The definition of paging includes one-way and two-way paging. The Governing

Board in their August, 2010 meeting adopted the position that all paging must be taxed or exempted.

Victoria responded to these issues in a letter to Scott Peterson dated September 10, 2010.

With respect to issue # 1, Governor Culver signed into law on April 21, 2010, Senate File 2375, which Pam Cook reviewed and okayed. Section 11 of Senate File 2375 amends Iowa Code section 423.46 to include language detailing the 30-day notice requirement for rate and base changes. Victoria had also provided notice of this change to the Governing Board in a letter dated April 26, 2010.

With respect to issue #2, there is no difference in the base for the state sales tax and the local option sales tax. Pam Cook indicated she found state sales tax exemptions for all the listed local option sales tax exemptions except for the local option sales tax exemption for equipment sold by the Department of Transportation. Iowa Code Section 423.3(78) provides an exemption from the state sales tax for a government entity. Department rule 701 IAC 17.1(6) implements this exemption and exempts proceeds from sales that are "...used by or donated to a government entity." Sales of tangible personal property by the Department of Transportation are excluded from the state sales tax base.

With respect to issue #3, we were in compliance at the time our Taxability Matrix and Certificate of Compliance were filed. The August determination by the Governing Board on this issue has not allowed us the opportunity to discuss the issue with the Iowa Legislature. This will require legislative action.

The Department believes Iowa was in substantial compliance with the SSUTA at the time the Taxability Matrix and Certificate of Compliance were filed with the Governing Board and still is in compliance.

The CRIC Committee agreed and Iowa was found to be in compliance with the Agreement. Ed Wallace mentioned it would be better if a preliminary letter would go out to states instead of just finding states out of compliance. Ed Wallace commended the Department for working hard and dealing with these letters. Dale agreed.

IV. Update on Legislation & Rules – Victoria

Sourcing – The Department will need to promulgate rules to address the sourcing of services.

A separate Streamlined Bill for the following will be proposed in the 2011 Legislative Session:

- Durable medical equipment (need to update our definition)
- Direct mail sourcing (need to update our definition)

- Paging services (may be addressed by rule)
- 423.50 remittance due date – Iowa statute refers– statutes refer to “legal state holidays; some states have banking holidays.” Proposed amendment uses the term “ Term used Federal Banking Holiday”

V. Update on Registration & Revenue Tracking – Larry

The project has one thousand three hundredhas1300 registrants. In Iowa we have 180 Model 1s CSPs, one Model 2 CSPs and the majority are Model 4s (paper filers). The Department is working to convert the Model 4 CSPs to eFile & pay.

Last fiscal year, the Department collected \$12.3 million, which was about \$200,000 more than had been collected in the previous fiscal year.

Iowa has 125 Model 4s that do not file because of zero sales. To date, the Department has collected \$12.3 million. Our latest quarter shows we collected about \$200,000 more than we did a year ago.

An amendment was passed last year to allow sellers to register as having no sales in Iowa when they registered as having no sales. They do not have to file a return until they do have sales. Iowa has 125 Model 4s that do not file because of zero sales.

VI. Future Streamlined Sales Tax National Meetings

- A. Monday, November 1, 2010 (Conference Call only)
- B. Week of May 15th, 2011, Washington, D.C. (assuming federal legislation has not passed)

The Governing Board will soon hold a conference call to talk about Georgia’s petition for membership.

Larry is monitoring SLAC, CRIC & BAC calls

Mark mentioned that the Legislative Service Agency has a report on Streamlined Sales Tax on their website. Diane will e-mail the link to Council members.

VII. Set Next Advisory Council Meeting – All

The Department will send a draft of the Annual Report to the Iowa General Assembly in advance to the Advisory Council via e-mail. At the end of January we will have a teleconference to approve the report for the Legislature. We will submit the report in February.

The Council had a brief discussion on other states that were found to be out of compliance with the SSTUA and the likelihood of federal legislation in an election year.

VIII. Adjournment

Mark adjourned the meeting at 11:08 A.M.