

IOWA STREAMLINED SALES TAX ADVISORY COUNCIL

2011 Report to the

IOWA GENERAL ASSEMBLY

January 13, 2012

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 12/31/11). 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 November 9, 2011. The meeting was held at the Iowa Department of Revenue in the Hoover State Office Building in Des Moines. Members were also able to participate remotely by telephone. Various issues were discussed at the meeting. A copy of the 2011 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 2011 the Streamlined Governing Board continued to work toward passage of federal legislation dealing with remote sales. This year the U.S. Congress is considering three pieces of remote sales tax collection legislation. On July 29, 2011, The Main Street Fairness Act (S. 1452 and H. R. 2701) was introduced which would require states to conform to the Streamlined Sales and Use Tax Agreement to receive collection authority. On October 13, The Marketplace Equity Act (H. R. 3179) was introduced which would give all states collection authority with fewer simplification requirements and on November 9, The Marketplace Fairness Act (S.1832) was introduced which would give collection authority to Streamlined member states and also to non-Streamlined member states who adopt some simplification requirements. On November 30 the full House Judiciary Committee held a hearing entitled Constitutional Limitations on States' authority to Collect Sales Taxes in E-Commerce. These pieces of legislation represent the best effort so far for Congress to move forward on this issue. If passed, the Main Street Fairness Act will require some form of vendor compensation for all sellers. This would be an issue for Iowa and would require some form of legislation as, at this time, no compensation is allowed to Iowa sellers.

The Governing Board continues to address the issues of uniform definitions. This year the Governing Board voted to define the term "all taxes imposed on the seller" found in the Agreement's definition of "sales price." States can now allow taxes on the seller to be either included in or excluded from the sales price. States will need to amend sales price definitions in the statute or regulation and also identify these types of taxes on their taxability matrices. The Department's 2012 Streamlined Sales Tax Bill will include a proposal to effect this change.

The definition of "candy" now includes the requirement that it is sold in the form of bars, drops, or pieces. The Governing Board has voted to update the list of what is and is not considered candy based on the requirement that it is sold in the form of bars, drops, or pieces. The Department will be amending rule 701-231.4 to remain compliant with the SSUTA.

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 2012 Legislature the issue of denial of relief from liability to those relying upon erroneous information in an 'address based database.' The SSUTA Section 306 requires the verbiage to be changed to only apply to erroneous information in a "zip code data base." The Department's 2012 Streamlined Sales tax bill will amend Iowa Code § 423.52 to make this change.

Finally, the Department's rule addressing Section 329, paragraphs 1 and 2, of the Agreement, provides that rate changes will be applied on a bill after the effective date of the change. The Governing Board found that this rule should read "on or after" the effective date. The Department will revise rule 701-240.7 to address this requirement.

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 of the House and Representative Guy Vander Linden has been appointed to serve in this capacity. 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 is Director of Revenue, Courtney Kay-Decker and the other is Administrator of Tax Policy and Communications Services, Victoria Daniels.

As of December 31, 2011 there were 1,750 registrants in the streamlined project. This represents an increase of 400 registrants during 2011. Currently, 240 are model 1 sellers and use certified service providers (CSP) and 1,510 are model 4 sellers and calculate and submit their own taxes.

The Council and the Iowa Department of Revenue participated in the annual Streamlined Sales Tax Governing Board meeting and activities in Seattle, Washington. Council members Senator William Dotzler, Courtney Kay-Decker, Dale Busacker, Warren Townsend, and Victoria Daniels attended.

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. Iowa's proposed rules will begin to make their way through the filing and review process in the near future.

Definition of Sales Price

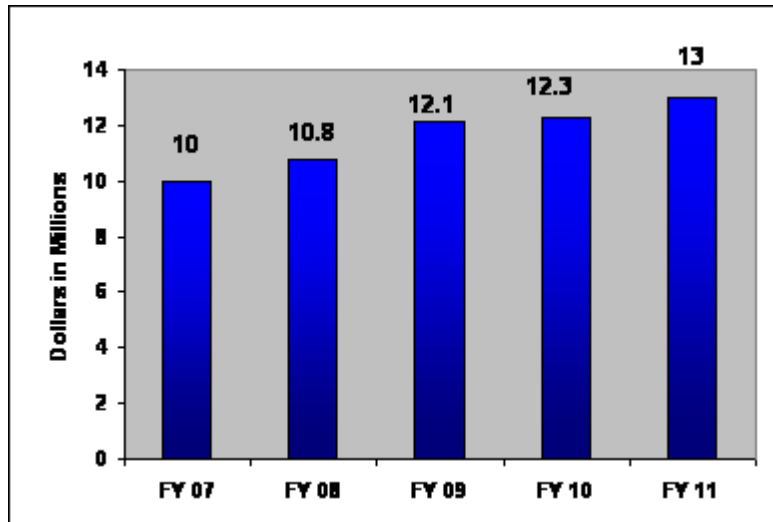
Sales Price” in relation to payment vouchers and layaway fees. The State and Local Advisory Council and Business Advisory Council are addressing the issues of the reemergence of layaway fees and the growing use of third-party social media coupon companies (e.g., Groupon or LivingSocial).

Credits for Taxes Paid to Other States. The State and Local Advisory Council and Business Advisory Council are addressing the issue of credit allowed for sales or use taxes paid to another state. Iowa currently allows credit for sales taxes paid to another state however other issues being discussed include proper sourcing, types of taxes paid and what is included in taxes paid.

Remote Sales Revenue Since Inception

The Streamlined Sales Tax Governing Board was formed in October, 2005 with remote seller registration and volunteer collections following shortly after. Iowa’s remote sales collections since that time are as follows:

| | | | | | | |
|--------------|---------------|---------------|---------------|---------------|---------------|---------------|
| FY 06 | FY 07 | FY 08 | FY 09 | FY 10 | FY 11 | TOTAL |
| \$5.0 | \$10.0 | \$10.8 | \$12.1 | \$12.3 | \$13.0 | \$63.2 |



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 2012, it will file its ninth annual report.

APPENDIX A

IOWA STREAMLINED SALES TAX ADVISORY COUNCIL

Members on December 31, 2011

Courtney Kay-Decker, 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

Dave Krutzfeldt
Interpower Corporation
Oskaloosa, IA

Nicole Molt
Iowa Taxpayers Association
Des Moines, IA

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

Monti Miller
The Learning Post
Des Moines, IA

Representative Guy Vander Linden
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

Kristin Kunert
NFIB/Iowa
Des Moines, IA

APPENDIX B

IOWA STREAMLINED SALES TAX ADVISORY COUNCIL

IOWA STREAMLINED SALES TAX ADVISORY COUNCIL

November 9, 2011; 10:00 A.M.

Hoover State Office Building
3rd Floor Conference Rooms
Des Moines, Iowa

Agenda

- I. Welcome & Opening Comments
 - A. New Members
- II. National Meetings in Seattle, WA (October 4, – 6, 2011)
 - A. Federal Legislation
 - B. Sourcing of Services Rule 311.4 Receipt of Personal Care Services
 - C. Candy Definition Rule 327.6.1
 - D. Sales Price Employee Incentive Program
 - E. Sales Price and “taxes included”
 - F. Hickory Wood Chips as a Food Ingredient
- III. Certificate of Compliance and Taxability Matrix/Annual Recertification
- IV. Update on Legislation & Rules
- V. Update on Registration & Revenue Tracking
- VI. Future Streamlined Sales Tax National Meetings
 - A. Week of December 12, 2011 (Conference Call only)
 - B. Spring, 2012, Washington, D.C.
- VII. Set Next Advisory Council Meeting
- VIII. Adjournment

APPENDIX C

Iowa Streamlined Sales Tax Advisory Council Meeting Minutes
Hoover State Office Building
November 09, 2011

Members Present: Courtney Kay-Decker, Victoria Daniels, Dale Busacker, Kristin Kunert, Steve Roberts, Nicole Molt, Representative Guy Vander Linden and Marc Michaelson. Those members joining via telephone: Warren Townsend, Ann Stoker, and Jim Henter.

Others present: Jim Miller, A.G.; Larry Paxton and Kathy McAninch, IDR staff

I. Welcome & Opening Comments – Victoria Daniels.

New Members Were Introduced:

- Representative Guy Vander Linden –State Legislator
- Nicole Molt-Executive Director Iowa Taxpayers Association
- Courtney Kay-Decker-Director Iowa Department of Revenue

II. Special Recognition. A motion was made by Steve Roberts to commend Diane Stoecker for all her years of service to the Iowa Streamlined Sales Tax Advisory Council. The motion carried.

III. National Meeting Topics (Seattle, WA October 4-6, 2011).

A. Federal Legislation-Larry Paxton/Warren Townsend

- The latest bill is known as “The Marketplace Fairness Act.”
 - The bill will be introduced in the House today with 5 Democratic sponsors and 5 Republican sponsors.
 - The bill authorizes Streamlined Member states to require large on-line and catalog retailers to collect their sales tax.
 - Collection would begin the first day of the calendar quarter that is at least 90 days after enactment of the bill.
- Non-Streamlined states that adopt minimum simplification requirements may begin to require the collection of their sales tax 6 months after enactment of the bill.
- The small seller exemption is set at \$500,000 in remote sales.
- Supporters include The Streamlined Governing Board, Amazon, and Walmart. Opponents include E-Bay, AT&T, and Americans for Tax Reform. COST and the National Retail Federation are undecided. The National Federation of Independent Businesses and Verizon are neutral.
- This bill is probably the best chance at federal legislation that we’ve ever had. It has the potential to pass and it will move very, very quickly.
- Amazon is proposing a system that vendors who sell products using their site would use the Amazon umbrella to file one return for all vendors.

B. Amnesty-Larry Paxton

- Certified Service providers are pushing for amnesty for remote sellers. States believe this is not necessary as their voluntary disclosure agreements would allow for a limited amnesty.

IV. **Streamlined Sales Tax Issues-Victoria and Larry.**

A. Rule/legislation updates needed

1. Sourcing Services – Victoria/Larry

- Iowa will be promulgating rules for sourcing services now that the Governing Board has begun adopting rules for sourcing services. So far two rules have been adopted:
 - Receipt of personal care services –Refers to services performed on the physical human body. They will be sourced where the services are performed.
 - Receipt of services performed on tangible personal property –Service is received at the location where the customer potentially can make first use of the tangible personal property.
 - The next subset of service sourcing rules will be for digital products. Larry is participating in the SLAC workgroup.

2. Definition of Candy -- Larry

- The current Streamlined definition of candy includes bars, drops, or pieces and anything candy coated.
- Examples of items that need to be revised in the rules are that caramel apples, cracker jacks, caramel popcorn, and kettle corn are now candy. Also, cotton candy is not considered candy but would typically be taxable as a prepared food.
- This definition is currently in 701 IAC 20.1. We will try to move into the 200 series along with other updated Streamlined rules.

3. Employee incentive programs - An amendment to the Agreement has passed that outlines the impact of employee incentive programs on the definition of sales price. Iowa will be adding language to address this amendment in the 2012 Legislative Session.

4. Taxes on seller- whether or not they can be passed onto purchasers. If tax is not passed on the tax needs to be itemized on the bill.
- Examples would be Federal Excise Taxes. Such as Federal gallonages, cigarette/cigars, gasoline.

- B. The Streamlined Sales Tax Compliance Review and Interpretation Committee (CRIC) is discussing whether or not Hickory Wood Chips should be defined as a food since they provide flavoring for foods.

V. Certificate of Compliance and Taxability Matrix Review –Larry Paxton/Victoria Daniels.

- A. In Section 306 verbiage needs to be changed to Denial of relief from liability would only apply to those relying upon erroneous information in a ‘zip code data base’ instead of an ‘address based database.’ We will be making this change in the 2012 legislative session. The applicable citation is 423.52.
- B. The rule cited for Section 329, paragraphs 1 and 2 provides that the rate changes will be applied on a bill after the effective date of the change. Instead it should read “on or after” the effective date. We will make this revision to 701 IAC 240.7.
- C. Other changes in text have been made to make the matrix and certificate compliant.
- D. FOLLOW-UP: At the CRIC Committee meeting on Thursday to Tuesday’s meeting, Iowa was found to be in substantial compliance with the Agreement.

VI. Annual Report to the Legislature – Victoria.

The Department will prepare a draft of the annual report to the General Assembly that is due in January. We will circulate to Council Members for review.

Proposed next meeting. Steve Roberts suggested a meeting sometime after the Spring Governing Board meeting unless federal legislation passes, creating a more expedient need to get together. For now the meeting date has been left open.