

**NATIONAL CONFERENCE OF STATE LEGISLATURES' –
EXECUTIVE COMMITTEE TASK FORCE ON STATE
AND LOCAL TAXATION**

SALT LAKE CITY, UTAH

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Update From Business Advisory Council (“BAC”) Members

Panelists

Charles Collins, ADP & BAC President

Fred Nicely, Council On State Taxation

Scott Peterson, Avalara

Topics Addressed

- Uniform Agent Authorization (limited power of attorney)
- Clarify tax agencies can provide liability relief
- Allow sellers to collect tax before finalizing a voluntary disclosure agreement with a state
- Provide information and more uniformity on post-transaction return issues
- Uniformly source digital products
- Credit for sales/use taxes paid to other states

Uniform Agent Authorization

- Objective – Simplify set up and processing for multistate taxpayers using a 3rd party provider for tax compliance (sales and use or payroll)
- Tax compliance functions by providers include:
 - Registration – Filing – Paying – Notice resolution – Resolution of agency questions on filings
- Issues Being Addressed
 - Varying state requirements for taxpayers outsourcing these functions
 - Traditional POA allows more broader authority
 - Traditional POA form has different elements in states
 - Traditional POA requests modification to remove functions and taxpayer to execute multiple forms

Uniform Agent Authorization

- Uniform Agent Authorization Proposal
 - Limited POA
 - Make payments, file returns & resolve issues with payments and filings
 - Include basic elements of state specific POA
 - Issued to firm and not individual
 - Allow taxpayer to execute one form
- Status
 - Worked with GB Audit Committee
 - Sales tax providers and payroll companies working on effort
 - Sales tax providers meeting with tax administrators
 - Working on electronic application

Liability Relief

- Taxability Matrix of 24 SSUTA Member States Lists 3 Disclosed Practices on Liability Relief
 - Erroneous Information in the Tax Administration Practices Section
 - Changes to the Tax Administration Practices Section
 - Changes to the Library of Definitions

Liability Relief

- 13 states provide liability relief for all three best practices
 - AR, IN, IA, KS, MN, NJ, ND, OK, RI, UT, VT, WA, WY
- 9 states provide some liability relief.
 - GA, KY, NE, NV, NC, OH, SD, WV, WI
- 1 state (MI) provides NO liability relief for any of the three best practices.
- 1 state (KY) had no available answers

Voluntary Disclosure Agreements

- A formal state process for an unlicensed business to anonymously come forward to resolve past liability
- Each state has their own form, process, and conditions, and in addition, the MTC provides a facilitation service to its members
- CSP's occasionally have a customer who has a liability issue in one or more state who wants to start collecting
- The problems are:
 - The CSP has to manage multiple forms
 - There is no common state response time
 - The customer wants to start collecting, but some states prohibit collecting without a license
- In August SST surveyed the states

Voluntary Disclosure Agreements – state survey

- If Seller A submits a VDA to your state and the seller wants to get registered through Streamlined as soon as possible to start collecting and remitting the appropriate sales and use tax to your state, what is the **earliest date** Seller A (or its representative, *e.g.*, a CSP) can register with your state **without it adversely affecting the VDA?**
- If your state requires Seller A to wait until the VDA is acknowledged or finalized before registering with the state, what should the seller do between the date the VDA was submitted and the date you allow the seller to register based on your response above?
- What happens if Seller A collects tax between the time it submits the VDA and when the VDA is finalized but the seller waits to register until the VDA is finalized?

Post Transaction Issues

- State and Local Advisory Council is planning on doing survey on how states address returns – will likely be developed into disclosed/best practices
- Sellers & CSPs need information (and uniformity) from states regarding tax treatment on a return when a seller provides full refunds:
 - Credit should apply for all returns made within state's normal statute of limitations
 - A state should allow a credit to be taken on the tax report period when the return is made
 - A state should not impose excessive documentation requirements
 - Customer returns without an invoice, the tax rate at the return store's location should apply
 - Consistent procedure are needed when a return is made to a different tax jurisdiction (*e.g.*, different state and/or locality)

Sourcing Digital Products

- State and Local Advisory Council began working on an issue paper addressing the sourcing of digital products back in 2009/2010
- Project put on hold in 2014 by request of some states and some members of the BAC
- Some of the conflict has been with (1) the federal Digital Goods and Services Tax Fairness Acts (S. 851 and H.R. 1643) and (2) over what constitutes a service v. tangible personal property (*i.e.*, access to pre-written software)
 - Federal legislation has a quasi-MPU provision that allows a qualified customer to direct pay sales/use tax when digital products are used at multiple locations; and
 - The legislation also prohibits multiple or discriminatory taxes on digital products and while it is very similar to sourcing under the SSUTA, it's not exactly the same
- There is a growing interest by some BAC members to see if these issues can be tackled – it may require amendments to the SSUTA (sourcing provisions are from 2002 and digital products definition is from 2007)

Credit for Sales and Use Tax Paid to Other Jurisdictions

- ***Comptroller of the Treasury v. Wynne***, May 18, 2015
 - Taxing individual residents of a state on their worldwide income without the state apportioning or providing credit for taxes paid to other states creates the risk of multiple taxation and violates internal consistency test for fair apportionment
- SSUTA Member States' Taxability Matrix Responses to Two Disclosed Practices on Credits:
 - States that provide full credit the combined amount of state and local "tax paid" to another state or local jurisdiction against both the state and local taxes due to the State:
 - 15 Yes, 8 No, 1 No Answer
 - States that limit credit for only the state "tax paid" to another state against the taxes due to the State (*i.e.*, no credit for local tax against state tax and if the State has local sales or use taxes, it only provides credit for state tax against state tax and local tax against local tax):
 - 6 Yes, 15 No, 3 No Answer

Questions