

- For Information
- For Discussion
- For Decision Making

BOARD OF GOVERNANCE  
**INFORMAL ISSUE PAPER**

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**Streamlined Sales and Use Tax Agreement (SSUTA)**

***Proposal 11 – Motion to Amend Section 807, Open Meetings***

**I. Issues**

Should the Board of Governance grant authority to its representative to vote on the motion to amend SSUTA Section 807, as proposed by Mr. Gary Viken of South Dakota?

Should the Board of Governance vote to amend Section 807 to add subsection (F) to allow a closed meeting of the Governing Board to consider pending litigation when the Governing Board is a party to the litigation? (Exhibit 1 provides the language of Section 807, including the proposed revision. Exhibit 2 provides the motion.)

**II. Staff Recommendation**

Staff recommends the Board of Governance authorize its representative to vote on the motion to amend SSUTA Section 807.

Staff also recommends the Board of Governance vote “yes” on the motion to amend Section 807 to allow closed meetings of the Governing Board to consider pending litigation when the Governing Board is a party to the litigation.

**III. Background**

SSUTA Section 807 allows the Governing Board to have a closed meeting to discuss litigation in which a member state is a party. However, the SSUTA does not contain a similar provision for when the Governing Board is a party to the litigation. This amendment would allow the Governing Board to have a closed meeting to discuss pending litigation in which the Governing Board is a party.

## **Proposal 11**

Amend Section 807

In California, the Bagely-Keene Open Meeting Act (Bagely-Keene) sets forth the rules for open meetings for all state boards and commissions. Bagely-Keene provides a pending litigation exception in section 11126(e)(1) of the Government Code. The purpose of the pending litigation exception is to permit the agency to confer with its attorney in circumstances where, if that conversation were to occur in open session, it would prejudice the position of the agency in the litigation. The pending litigation exception constitutes the exclusive expression of the attorney-client privilege.

### **IV. Summary**

The SSUTA allows the Governing Board to hold a closed meeting to discuss litigation in which a member state is a party, but does not contain a similar provision for when the Governing Board is a party to the litigation. This proposed amendment resolves this issue.

Bagely-Keene provides a pending litigation exception that allows a state board or commission to hold a closed meeting to address pending litigation. The adoption of this proposed amendment would provide the Governing Board with a similar exception to its open meeting rules.

For the reasons stated above, staff recommends a “yes” vote on the proposed amendment.

Prepared by Larry Bergkamp, Sales and Use Tax Department  
Current as of March 29, 2005

**Section 807: OPEN MEETINGS**

Each meeting of the governing board and the minutes thereof shall be open to the public except as provided herein. Meetings of the governing board may be closed only for one or more of the following:

- A. Personnel issues.
- B. Information required by the laws of any member state to be protected from public disclosure. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.
- C. Proprietary information requested by any business to be protected from disclosure.
- D. The consideration of issues incident to competitive bidding, requests for information, or certification, the disclosure of which would defeat the public interest in a fair and competitive process.
- E. The consideration of pending litigation in a member state the discussion of which in a public session would, in the judgment of the member state engaged in the litigation, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.
- F. The consideration of pending litigation in which the governing board is a party the discussion of which in a public session would, in the judgement of the governing board, adversely affect its interest. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

A closed session of the governing board may be convened by the chair or by a majority vote of the governing board. When a closed session is convened, the reason for the closed session shall be noted in a public session. Any actions taken in the closed session shall be reported immediately upon the reconvening of a public session.

**Amendment #11 – Offered by Gary Viken, South Dakota**

**Motion to amend Section 807(F) of the Streamlined Sales Tax Agreement by adding the following:**

The consideration of pending litigation in which the governing board is a party the discussion of which in a public session would, in the judgment of the governing board, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

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**BACKGROUND AND EXPLANATION**

The Streamline Agreement allows the Governing Board to have a closed session to discuss litigation in which a member state is a party, but the Agreement does not contain a similar provision for when the Governing Board is a party to litigation.

To resolve this issue South Dakota offers the following amendment to the Agreement.

**PROPOSED AMENDMENT**

**Section 807: OPEN MEETINGS**

Each meeting of the governing board and the minutes thereof shall be open to the public except as provided herein. Meetings of the governing board may be closed only for one or more of the following:

- A. Personnel issues.
- B. Information required by the laws of any member state to be protected from public disclosure. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.
- C. Proprietary information requested by any business to be protected from disclosure.
- D. The consideration of issues incident to competitive bidding, requests for information, or certification, the disclosure of which would defeat the public interest in a fair and competitive process.
- E. The consideration of pending litigation in a member state the discussion of which in a public session would, in the judgment of the member state engaged in the litigation, adversely affect its interests. In the

**Proposal 11**

Amend Section 807

**Exhibit 2**

meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

F. The consideration of pending litigation in which the governing board is a party the discussion of which in a public session would, in the judgment of the governing board, adversely affect its interests. In the meeting, the governing board shall excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

A closed session of the governing board may be convened by the chair or by a majority vote of the governing board. When a closed session is convened, the reason for the closed session shall be noted in a public session. Any actions taken in the closed session shall be reported immediately upon the reconvening of a public session.