

- 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 10 – Motion to Amend Section 702, Approval of Initial States***

**I. Issues**

Should the Board of Governance grant authority to its representative to vote on the motion to amend SSUTA Section 702, as proposed by Mr. Gary Viken of South Dakota?

Should the Board of Governance vote to amend Section 702 to allow states whose relevant statutes, rules, regulations, or other authorities have been enacted, but are not yet in effect, to be counted for the purpose of establishing the Governing Board and implementing the SSUTA? (Exhibit 1 provides the language of Section 702, including the proposed revisions. Exhibit 2 provides the motion.)

**II. Staff Recommendation**

Staff recommends the Board of Governance authorize its representative to “abstain” from the vote on the motion to amend SSUTA Section 702.

**III. Background**

SSUTA Section 702 provides that “a state that has adopted changes to its statutes, rules, regulations, or other authorities necessary to bring the state into compliance” may seek membership in the Agreement and that, “If some changes have been adopted, but are not yet in effect, the petition for membership shall include the date on which those changes will be effective.” The language of Section 702 leaves the legal effect of changes that are adopted, but not yet in effect, somewhat undefined. This amendment would provide that changes that “have been enacted, but are not yet in effect, shall be counted for the purpose of establishing the governing board and implementing the Agreement,” although no seller would be required to collect that state’s taxes until the changes go into effect.

## **Proposal 10**

Amend Section 702

### **IV. Summary**

Several issues have arisen recently that might impact the effective date of the SSUTA. An amendment is necessary to allow the SSUTA to go into effect. This proposed amendment only applies to Conforming States that have petitioned for certification under the SSUTA. California is not a member of this group of states and will not be considered when calculating the thresholds for the creation of the Governing Board and implementation of the SSUTA.

For the reasons stated above, staff recommends the Board of Governance “abstain” from the vote on this proposed amendment.

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

**Section 702: APPROVAL OF INITIAL STATES**

Prior to the effective date of the Agreement, a state that has adopted changes to its statutes, rules, regulations, or other authorities necessary to bring the state into compliance as provided in Section 805, may seek membership by forwarding a petition for membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing States. If some changes have been adopted, but are not yet in effect, the petition for membership shall include the date on which those changes will be effective. A petitioning state shall also provide a copy of its petition for membership and certificate of compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site. A state whose relevant statutes, rules, regulations, or other authorities have been enacted, but are not yet in effect, shall be counted for the purpose of establishing the governing board and implementing the Agreement. However, a seller need not agree to collect and remit sales and use taxes for any such state, as required by Section 401 B, until its statutes, rules, regulations, or other authorities are in effect.

Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. The meeting shall be convened as soon as practicable after receipt of the requisite number of petitions provided in Section 701, but shall not be earlier than the date the relevant statutes, rules, regulations, or other authorities of the requisite number of petitioning states are effective. An affirmative vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.

The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

**Amendment # 10 – Offered by Gary Viken, South Dakota**

**Motion to amend Section 702 of the Streamlined Sales & Use Tax Agreement by adding the following:**

A state whose relevant statutes, rules, regulations, or other authorities have been enacted, but are not yet in effect, shall be counted for the purpose of establishing the governing board and implementing the Agreement. However, a seller need not agree to collect and remit sales and use taxes for any such state, as required by Section 401B, until its statutes, rules, regulations, or other authorities are in effect.

**BACKGROUND AND EXPLANATION**

Several issues have arisen recently that might impact the effective date of the Streamline Agreement. An amendment may be necessary to allow the Agreement to go into effect

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

**PROPOSED AMENDMENT**

**Section 702: APPROVAL OF INITIAL STATES**

Prior to the effective date of the Agreement, a state that has adopted changes to its statutes, rules, regulations, or other authorities necessary to bring the state into compliance as provided in Section 805, may seek membership by forwarding a petition for membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing States. If some changes have been adopted, but are not yet in effect, the petition for membership shall include the date on which those changes will be effective. A petitioning state shall also provide a copy of its petition for membership and certificate of compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site. A state whose relevant statutes, rules, regulations, or other authorities have been enacted, but are not yet in effect, shall be counted for the purpose of establishing the governing board and implementing the Agreement. However, a seller need not agree to collect and remit sales and use taxes for any such state, as required by Section 401B, until its statutes, rules, regulations, or other authorities are in effect.

Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. The meeting shall be convened as soon as practicable after receipt of the requisite number of petitions provided in Section 701, but shall not be earlier than the date the relevant statutes, rules, regulations, or other authorities of the requisite number of petitioning states are effective. An affirmative vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.

The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.