At its July 2009 meeting, the subcommittee directed the drafting group to prepare a policy checklist for administering telecommunications transactions taxes according to Proposal II, Local Imposition/State Administration using the proposed federal Streamlined legislation as a guide. The attached checklist can be divided into three parts: Part I provisions that are required by the SST proposed federal legislation; Part II, practical provisions that drafting group recommends the subcommittee consider in developing a centralized administrative model; and Part III, the question of what “other taxes” (aside from sales and use taxes) the model should or should not address, such as taxes not administered by the state revenue agency.

A question specifically asked by the Committee was the meaning of the term “other taxes” as used in the draft SST proposed legislation. The draft legislation does not contain a definition for this term. However, the industry has advised the drafting group that the term is understood to mean

“any tax, charge or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for [mobile] telecommunications services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.”

The industry has further advised that the “other taxes” contemplated by the SST proposed legislation are set forth in the attached 2004 COST State Study and Report on Telecommunications Taxation, which provides a state by state breakdown of these “other” telecommunications taxes.

The Committee then questioned whether the term includes levies not administered by the state revenue agency, such as E-911 taxes and fees paid into the Universal Service fund (usually administered by the state public utility commission). Industry again has advised that the proposed SST legislation merely requires that these taxes be administered at the
state level, but does not designate which agency will be responsible for administration. Therefore, it seems that pursuant to the proposed legislation, the responsibility for collecting and administering local non-transaction type taxes could be transferred to the state revenue agency, or the responsibility may remain with the State agency currently charged with collecting such taxes and fees. Industry has also advised that the term “other taxes” does not apply to non-transactional type taxes, such as income or property taxes.
I. Relevant Requirements from Draft Federal Streamlined Legislation

1. State Level Registration §7(a)(1)
   a. One-stop registration with state revenue agency for sales and other communications taxes administered solely within the state
   b. Required election to register with local jurisdictions §7(b)(2)(D)(i)

2. Uniform Tax Base §7(a)(2), §7(b)(2)(D)(ii)
   a. Uniform tax base for each type of tax (including sales tax) imposed on communications services, but tax base for each type of tax not required to be coextensive with sales tax base
   b. Tax base need not be consistent from state to state
   c. If a particular type of tax is not imposed at the state level but is imposed by more than one local jurisdiction, §7(a)(2) requires the localities to have the same tax base

   Is this provision relevant to the administration of taxes?

3. Uniform Returns and Remittances §7(a)(6), §7(b)(2)(D)(iii)
   a. One state-specific uniform return for each type of tax levied on communication services
      i. Sales Tax
      ii. Other Telecommunications Transaction-Type Taxes *

*The Streamlined proposed legislation does not contain a definition of “other taxes.” The drafting group has been advised by industry that the term means:

“any tax, charge or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for [mobile] telecommunications services”
services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee."

This language is derived from §116(a) of the Mobile Telecommunications Sourcing Act.

4. Procedure for certification of service providers and software for tax rates and taxability of telecommunications services. §7(a)(4)

Rely on procedures to certify service providers and software for sales tax, or develop different procedures for telecommunications transaction-type taxes?

5. Rules for bad debts and rounding. §7(a)(5)
   a. Bad Debts
      i. Amounts deductible
         (1) Sales tax only (most common) vs. non-taxable charges (interest, collection costs, etc.)
      ii. Reporting
         (1) Monthly?
         (2) Reporting period when written off?
      iii. Limitation period on filing claim?
      iv. Allow Refunds?
   b. Rounding Rules
      i. Round up/down to nearest penny?
      ii. Round up/down to nearest dollar?
      iii. Round to X decimal points and round up/down if last number is greater/lesser than Y?

6. Uniform Returns and Remittances, Consistent Electronic Filing and Remittance Methods. §7(a)(6)-(7)
   a. All Returns and Remittances use same protocol
   b. EFT Remittance required

7. State Level Administration §7(a)(8)
   a. All state and local taxes
   b. State-level filing of returns

8. Taxability Matrix §7(a)(11)

   Is this provision relevant in light of #10, (Relief from Liability) i.e., is a taxability matrix required?

9. Tax Rates §7(a)(9), §7(b)(2)(D)(iv)

   One rate for each type of tax (including sales tax) levied on communication services applicable to all jurisdictions that impose such taxes
Is this provision relevant to the administration of taxes?

10. Relief from Liability §7(a)(12)

Relief from liability for incorrect collection of sales, use or other taxes on telecommunications. Relieves purchaser from penalties stemming from such liability where the improper collection stems from reliance on information provided by state regarding tax rates, boundaries, tax jurisdiction assignments and matrix.

11. Audit Procedures §7(a)(13), §7(b)(2)(D)(v)

One audit at state level for each type of tax

Frequency of audit
   a. Monthly?
   b. Quarterly?
   c. Semi-annually?
   d. Yearly?

12. Compensation §7(a)(14)

   a. Expenses from documenting tax-exempt sales
   b. Expenses incurred w/respect to audits and appeals

13. Protections for consumer privacy. §7(a)(15)

14. Uniform for rules and procedures for refunds and credits §7(a)(19)

II. Other Practical Provisions to Consider

15. Segregation of Funds; Depository

   a. Establish separate account for taxes collected
      i. Interest-bearing or Non-Interest Bearing
         A. Which party is entitled to interest, State or local government?
            1. If local, on what basis will interest be allocated?
               (a) Formula?
               (b) Ratio from actual collections?
B. Should interest be used to reimburse state for cost of administration (see #17)?

b. Account Oversight and Maintenance
   i. State revenue agency?
   ii. Other agency?

16. Distribution of taxes collected to local jurisdictions.
   a. Distribution
      i. By formula, or actual collections
      ii. Error Correction—When should errors in distribution be addressed?
      iii. Frequency—how often should distribution be made?
         (a) Monthly?
         (b) Quarterly?
         (c) Semi-annually?
         (d) Yearly?

17. Reimbursement of Administrative Costs.
   a. Should reimbursement be based on actual expenditures or a percentage of taxes collected?
   b. Should reimbursement be made
      (a) Monthly?
      (b) Quarterly?
      (c) Semi-annually?
      (d) Yearly?

III. What “Other Taxes” Should the Model Address in addition to Sales & Use Taxes?

What types of taxes other than those administered by the revenue agency should the proposal address, such as E-911 taxes and USF fees? Some local jurisdictions impose these taxes and fees and communications providers. Industry has advised the Streamlined proposed legislation merely requires that these taxes be administered at the state level, but does not designate which agency will be responsible for these taxes. Therefore, it seems that pursuant to the proposed legislation, the responsibility for collecting and administering local non-transaction type taxes may rest with the State agency currently charged with collecting such taxes and fees, instead of being transferred to the state revenue agency.
Industry has also advised the drafting group that the term “other taxes” does not apply to non-transaction type taxes, such as income or property taxes.