

## **Georgia Compliance Committee Report**

October 25, 2010

### **Compliance Review Activities:**

Compliance Committee Reviewers:

Jane Page (South Dakota), Sherry Harrell Hathaway (Tennessee) and Jody Bartels (South Dakota)

CRIC Contact:

Myles Vosberg, chair (North Dakota)

State Contact:

Amy Oneacre, Anita DeGumbia and Frank O'Connell

Public written comments:

There were no written public comments other than the BAC comments.

### **State Petition History:**

Conforming Legislation Effective Date:

January 1, 2011

Petition for Membership Date:

Filed October 13, 2010 for January 1, 2011

Certificate of Compliance Checklist Date:

October 13, 2010

### **General Summary of Review:**

State reviewers and business reviewers independently reviewed Georgia's Certificate of Compliance and Taxability Matrix, along with their state sales and use tax statutes to ensure compliance with the Streamlined Sales and Use Tax Agreement. Georgia's conforming legislation is effective January 1, 2011. The reviewers provided Georgia with a list of issues found during the review.

Starting on next page see summary of questions presented by the state reviewers and BAC and the responses.

Georgia stated they have the resources to implement the technology requirements by January 1, 2011. Georgia also stated it has the ability to promulgate emergency rules prior to January 1, 2011 to implement some of the suggested changes.

<b>Section</b>	<b>Findings</b>	<b>Recommendation</b>	<b>Response</b>	<b>Substantial Compliance</b>
301	No problem with State Level Administration			Yes
302	State and Local Tax Base: Georgia has a partial exemption for natural or artificial gas used in the production of electricity that is subsequently sold - state tax does not apply but local tax does apply.	Georgia may: 1) repeal the state exemption to fully tax, 2) exempt from local taxation for full exemption or 3) provide for the state exemption through purchaser filing refund claims directly with the department.		High Risk {BAC position is that this prevents full membership}
303	Seller Registration: Georgia does not have the ability to pull a registration yet.	Needs to have the technology by January 1, 2011.	Georgia should have the technical ability to pull registration data from the central registration system on January 1, 2011.	Unknown – Georgia said it will comply by that date.
304	No problem with notification of state tax changes.			Yes
305	Local Rate and Boundary Changes: No rate and boundary table developed yet.	Rates and boundaries database will need to be developed by January 1, 2011.	Georgia has resources to develop the database on time.	Unknown – Georgia said it will comply by that date.
306	No problem with relief from certain liability			Yes
307	No problems with database requirements and exceptions			Unknown – Georgia said it will comply by that date.

308	State and Local rates: The sale or use of jet fuel by a qualifying airline at a qualifying airport is exempt from the first 1.80% of the 4% state sales tax, and the 1% county special purpose local option sales tax that is effective until July 1, 2011.	Georgia may repeal the reduced state and local to subject to full rate or provide jet fuel is fully exempt from tax.	This law is only effective until July 1, 2011.	Medium Risk {BAC position is that this prevents full membership until expiration date.}
310	Lease of motor vehicles: GA 48-8-2 (33) (B) has the wrong sourcing for leased vehicles. The correct sourcing of lease would be garage location - not where the vehicle is registered.	GA 48-8-77 (b) (3) has the correct sourcing for the lease of vehicles, GA needs to correct GA 48-8-2 (33)(B)		Medium Risk {BAC position is that this prevents full membership until corrected.}
310.1	Georgia had not elected origin based sourcing			N/A
311	No problem with general sourcing definitions.			Yes
313	No problem with direct mail sourcing.			Yes
314	Telecommunications Sourcing: Georgia taxes very limited telecommunications. Since Georgia taxes only mobile telecommunications and local telephone service and local exchange service, Georgia adopted only sourcing that would be applicable to mobile telecommunications services and local telecommunications sourcing. Georgia did not adopt sourcing for private communications or post paid calling services or prepaid calling services.	Pursuant to the Agreement Georgia should provide for a definition of local telephone service that is subject to tax in Georgia. Georgia does not need to adopt sourcing for private communications or post paid calling services or prepaid calling services since such services are not taxable in Georgia.		Low Risk

315	Telecommunications Sourcing Definitions: Georgia does not include in their statutes or rules the definitions of certain telecommunications sourcing definitions that are used in their law. (call by call basis, service address, mobile telecommunications services, place of primary use). Georgia has currently placed the definitions for these terms in an informational bulletin.	Needs rule or statute to include the definitions.		Medium Risk {BAC position is that this must be placed in law or, at a minimum, a regulation for full membership.}
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<p>316</p>	<p>Enactment of Exemption: 48-8-3(12) uses the term "school lunches" instead of the terms food and food ingredients and prepared food.</p> <p>48-8-3(47) The provisions for this exemption need to conform to the definition of drugs and the options available to the states. Georgia has used the term dietary supplements in the Streamlined compliant definition of drug but Georgia has not adopted the definition of dietary supplements.</p> <p>48-8-3(50) GA exempts blood measuring devices and other monitoring equipment used exclusively by diabetics without a prescription. These items are under the definition of durable medical equipment. Georgia exempts all durable medical equipment prescribed by a physician.</p> <p>48-8-3(50) The exemption for insulin delivery systems used exclusively by diabetics without a prescription is not an item that is allowed under the definition of prosthetic devices. Georgia exempts all prosthetic devices prescribed by a physician.</p>	<p>48-8-3(12) The provision for this exemption needs to use the terms food and food ingredients and prepared food instead of "school lunches".</p> <p>Reference to "controlled substances" is not part of the Streamlined drug definition. In addition they need to adopt the definition of over the counter drugs to clarify Georgia taxes over the counter drugs and exempts prescription drugs.</p> <p>Needs to amend statute to clarify that these items are exempt only with a prescription</p> <p>Needs to amend statute to clarify that these items are exempt only with a prescription.</p>		<p>Medium Risk {BAC position is that this must be placed in law or, at a minimum, a regulation for full membership.}</p>
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317	Administration of Exemptions – Georgia has numerous exemptions that require purchasers to qualify with the department and receive a letter, certificate and or exemption number.	Needs to clarify that the Streamlined Certificate of Exemption can be used for all of these exemptions.		HighRisk {BAC position is that compliance with this is required by Rule 801.1 for associate membership – compliance must be by law or regulation – not administrative policy.}
318	Uniform Tax Returns –Currently, a seller that has 4 or more locations in Georgia may file one return for the state. Sellers that have 1-3 locations in Georgia file a return for each location but may request to file one return.	Georgia does need to update its regulation regarding filing of returns to clarify this.		Low Risk {BAC position is that this is required for full membership.}
319	Uniform Rules for Remittance of Funds: A1 & A2. Georgia has an additional payment to be paid with the previous months return.  F. The state requires that any data that accompanies a remittance to be formatted using uniform tax type and payment type codes	Have corrected it on the certificate.	Georgia is currently developing administrative policy related to data that accompanies a remittance.	Yes

320	<p>Uniform Rules for Recovery of bad debts: C1. Georgia, per information bulletin, allows the bad debt to be to be deducted on the return for the period during which the bad debt is written off.</p> <p>C2. Per information bulletin, when the seller is not required to file a federal income tax return the state allows bad debts to be deducted on the return for the period during which the bad debt is written off.</p> <p>E. Georgia will need a statute to provide that when the amount of a bad debt exceeds taxable sales for period when written off, a refund claim may be filed within the applicable statute of limitations</p>	<p>They will need a rule.</p> <p>They will need a rule.</p> <p>Georgia will need to implement a new statute.</p>		<p>Medium Risk {BAC position is that this is required for full membership.}</p>
321	No problems found with confidentiality and privacy protections			Yes
322	Georgia does not have sales tax holidays			N/A {BAC notes Georgia had holidays in the past – future sales tax holidays must comply with this provision.}
323	Caps & Thresholds: 1. Georgia has a partial sales and use tax exemption for certain energy commodities used in the manufacturing process, but it expires Dec 31, 2010, so it is not an issue.			Yes
324	Rounding Rule: B.1. Georgia, by administrative policy, allows sellers to elect to compute tax due on a transaction, on an item or invoice basis, and shall allow rounding rule to be applied to aggregated state and local taxes.	They will need a rule.		Low Risk {BAC position is that this is required for full membership.}
325	No problems found with customer refund procedures			Yes

326	No problems found with Direct Pay permits.			Yes
327	See end of report for Library of Definitions			
328	<p>Sales Price: They did not include the statute cite for most trade-ins on the certificate.</p> <p>Delivery Charges: They had postage listed as excluded from sales price - it is included.</p> <p>Food &amp; Food Ingredients: Food sold through vending machines is only subject to city tax.</p> <p>Prepared Food: Food sold without eating utensils was originally checked as excluded from the definition.</p>	<p>They corrected the certificate.</p> <p>They corrected the certificate.</p> <p>Clarified that vending machine food is subject to local tax only.</p> <p>They corrected the certificate.</p>		Yes
329	No problems found with effective date of tax rate changes for services.			Yes
330	No problems found with bundled transaction language			Yes
331	No problems found with relief provisions			Yes
332	No problems found with specified digital products.	N/A		Yes
333	No problems found with use of specified digital products	N/A		Yes
334	No problems found with prohibited replacement taxes			Yes



401	<p>A. Seller Participation: Georgia is not yet ready to accept electronic registrations.</p> <p>B. By administrative policy Georgia provides that it will not use a seller's registration with the central registration system and collection of taxes in member states in determining whether seller has nexus.</p>	<p>Georgia must be able to accept registrations by January 1,2011</p> <p>Will need a statute or rule.</p>	<p>Georgia is working on the registration system.</p>	<p>High Risk {BAC position is that compliance with part B is required by Rule 801.1 for associate membership – compliance must be by law or regulation – not administrative policy.}</p>
402	No problems with amnesty for registration.			Yes
403	No problems with method of remittance.			Yes
404	No problems with registration by an agent.			Yes
501	No problems with provider and system certification.			Yes
502	<p>B. The state, by administrative policy, provides liability relief to CSP's and model 2 sellers for reliance on the certification.</p> <p>C. The state, by administrative policy, provides liability relief to CSP's in the same manner as provided to sellers under Section 317.</p> <p>E. The state, by administrative policy, allows the CSP or model 2 seller 10 days to correct classification of items found to be in error before holding the CSP or model 2 seller liable.</p>	<p>Will need a statute or rule to clarify or commissioner authority for this.</p> <p>Will need a statute or rule to clarify or commissioner authority for this..</p> <p>Will need a statute or rule to clarify or commissioner authority for this.</p>		<p>Medium Risk. {BAC position is that this is required for full membership.}</p>
601	No problem with Monetary allowance under Model 1.			Yes
602	No problem with Monetary allowance for Model 2 sellers.			Yes

603	No problem with Monetary allowance for Model 3 sellers and all other sellers that are not under Models 1 or 2			Yes
604	Monetary allowance for sellers impacted by origin sourcing. Georgia is not an origin state.			N/A
	Library of Definitions:			
	Computer Software Maintenance Contract	Not exact but substantially similar		Low
	Over-the-Counter Drug	Needs to adopt definition.		Low {BAC position is that this is required for full membership.}
	Prepared Food, exempts NAIC 3121, beverage industry.	Needs to update the law to delete the reference to this NAICS code.	At this time the tax is minimal since a manufacturer would only be subject to the prepared food tax if they sold fountain drinks directly to the consumer, and this is rare.	Medium Risk {BAC position is that this is required for full membership.}
	Retail Sale: 48-8-2(31)(E) Concern with "retail sale" definition - claiming "resale" can still constitute a retail sale.			Medium Risk {BAC position is that this may need modified for full membership.}
	Sales Price Definition - has an exemption for automobile trade-ins. 48-8-2 (34)(B)(vii)	Definition needs to match exemption statute for trade-in credits which is in 48-8-44.		Low Risk {BAC position is that this is required for full membership.}
	Grooming and Hygiene Products	Needs to adopt definition.		Low {BAC position is that this is required for full membership.}