

To: Wayne Harper, President
Streamlined Sales Tax Governing Board

From: Compliance Review and Interpretations Committee
Myles Vosberg, Chairman

Subject: 2013 Compliance Review

Date: November 25, 2013

The Compliance Review and Interpretations Committee (CRIC) has completed its annual recertification review of member states in accordance with Rule 905 of the Streamlined Sales and Use Tax Governing Board Inc. CRIC, with assistance from Governing Board staff reviewed member states' (states) compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) following each state's submission of its statement of compliance (or statement of noncompliance) and updated certificate of compliance and taxability matrix.

Governing Board staff made an initial review of the certificates of compliance and taxability matrix and identified issues of possible noncompliance with the Agreement. The states and the public had a thirty day period to respond to the staff's issues and to raise additional issues of possible noncompliance. All written comments submitted were posted to the Governing Board's website. States and the public were given an additional ten days to respond to any issues raised or to respond to comments made during the original thirty day comment period.

CRIC held a series of public hearings during which each state responded to the staff and public regarding any issues of noncompliance and the public was also given an opportunity to comment or raise other concerns with the states. CRIC took a public vote on whether each state was or was not out-of-compliance with the Agreement pursuant to Section 805.

Three issues were carried over from the 2012 review. None were resolved by the August 1, 2013 recertification date and, therefore, were not considered during the 2013 review. The issues are as follows:

1. How does Section 310 sourcing apply to the sourcing of digital goods that are transferred electronically without the download of the product? This issue was referred to SLAC by the Governing Board in September, 2009 and work is ongoing.
2. In Section 314.C.3 of the Agreement, is the option of using the mobile phone number in Section 310 sourcing of prepaid wireless calling service an option for the state to choose from or is it an option for the seller? The Agreement needs to be clarified with respect to the option to use the mobile phone number when sourcing prepaid wireless calling service. CRIC recommends the issue be assigned to SLAC or the Executive Committee to seek a final resolution.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

3. Under the Agreement, is access to prewritten computer software treated as tangible personal property, other products transferred electronically, or either as tangible personal property or other products transferred electronically? This issue was referred to SLAC in 2011 for resolution and has been under discussion by the State and Local Advisory Council's Remote Access to Prewritten Computer Software Workgroup. Accordingly, CRIC has deferred this issue. During the annual review process, the Business Advisory Council indicated that it was amenable to the continued deferral of the issue, but noted that their agreement should not be interpreted as acceptance to statements made by the member states on the issue during the annual compliance review process.

An additional issue was raised relating to whether or not take and bake pizzas fall within the definition of "prepared food." This issue is the subject of a CRIC interpretation request that was submitted to CRIC on August 15, 2013. Because the request was not submitted until after the August 1, 2013 annual recertification deadline, the issue was not considered during the 2013 annual compliance reviews. The issue may be raised in next year's compliance reviews assuming the Governing Board takes final action on the issue prior to next year's August 1 deadline. This is consistent with how CRIC handled a similar situation in prior years related to one-way paging services.

The following summary includes for each member state: CRIC's finding as to whether the state is or is not out of compliance with the Agreement, the result of CRIC's vote on the finding for each state, a summary of the issues raised for each member state and the state's response.

As chair of the committee, I would like to express my appreciation for the work of the committee members and the staff of the Governing Board in this important task. I would also like to thank the representatives of the states that worked with the committee and staff, the Business Advisory Council, and the members of the public that provided input.

State Action:

Arkansas

Finding: CRIC recommends that Arkansas be found not out-of-compliance with the Agreement. There were no issues identified.

Vote: 5-0; Cram, Fox, Jennrich, Paxton, Vosberg (Noble absent and Atchley abstained)

Georgia

Finding: CRIC recommends that Georgia be found out-of-compliance with the Agreement on Issues 6 and 8 below. The state remains out of compliance on Issue 4. With respect to Issues 1, 2 and 3, although there currently are no sales tax holidays on the books for 2014, it was noted that the same language could be used for future holidays and would not be allowed under the Agreement. The state was found not out of compliance on issues 5 and 7.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

Compliance Review and Interpretation Committee
2013 Compliance Review Report

Issues raised:

1. The states sales tax holidays in 2012 and 2013 for school supplies and computers (August) and for energy and water efficient products (October) do not use the definitions in the Agreement for such products. The state was found out of compliance on this issue in 2012.
2. The threshold used for the sales tax holidays on computers and computer accessories applies per single purchase, not per article purchased. The state was found out of compliance on this issue in 2012.
3. During the sales tax holidays in 2013, the state applied a use-based requirement to items exempt during the sales tax holiday and certain items are not exempt if purchased at a theme park, entertainment complex, public lodging establishment, restaurant or airport.
4. The Educational local option sales tax generally applies to energy used in manufacturing, but the other local sales taxes provide an exemption for energy used in manufacturing. The state was found out of compliance on this issue in 2012.
5. The federal motor fuels tax is exempt from sales tax. The tax is imposed at the wholesale level. CRIC did not feel that the Agreement provisions concerning “sales price” applied at the wholesale level.
6. The legislature reinstated the “good faith” requirement for accepting exemption certificates.
7. The statute does not address when a payment is due if the due date falls on a day the Federal Reserve Bank is closed.
8. The state accepts the SER from Model 1 sellers only.

Georgia response:

Issue 1 - The state agreed that the definitions for the items included in the sales tax holiday did not comply with the Agreement definitions during the 2012 and 2013 review periods but indicated that this would not remain a compliance issue next year because there is not a sales tax holiday scheduled at this time.

Issue 2 - Georgia indicated that the threshold for computers and computer accessories was applied on a single purchase basis and not on a single article basis and that a use based requirement had applied during the holidays.

With respect to Issue 3, Georgia indicated that the holidays took place after August 1 and since there are no future holidays scheduled, this should not be a compliance issue.

With respect to Issue 4, the state confirmed the energy exemption applies to all local taxes except the educational local option sales tax and that the exemption applies to forms of energy not included in the Section 308 provisions.

With respect to Issue 5, the state explained that the motor fuel tax was collected at the wholesale level and not at the retail level.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

The state agreed they were out of compliance with respect to Issues 6 and 8.

For issue 7, the state indicated that they would apply the due date provisions for days the Federal Reserve Bank is closed administratively and would post a bulletin on their web site indicating such.

A couple suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. Georgia made the changes and submitted an updated Taxability Matrix and Certificate of Compliance.

Indiana

Finding: CRIC recommends that Indiana be found out-of-compliance with the Agreement regarding Issues 1 and 4 below and remains out-of-compliance with respect to Issue 2 (rounding rule) and Issue 3 (acceptance of SERs from all sellers). The state was found not out of compliance on Issue 5.

Vote: 6-0; Atchley, Cram, Fox, Jennrich, Paxton, Vosberg (Noble absent)

Issues raised:

1. The Federal Manufacturer's Tax and Federal Retailer's Excise Tax are exempt from the sales tax.
2. The state was declared out of compliance in 2012 because the statute for the rounding rule does not contain a provision allowing the seller to elect to compute tax on an item or invoice basis. The statute requires the tax to be based on the gross retail income of the transaction.
3. The state was declared out of compliance in 2011 and 2012 because they cannot accept the SER from Model 4 sellers. The state also cannot accept SERs from sellers who are not registered in the Streamlined central registration system.
4. The state was declared out of compliance in 2011 and 2012 because they exempted blood glucose meters with or without a prescription from the sales tax but do not exempt all durable medical equipment unless sold with a prescription. The statute was changed to delete the exemption for blood glucose meters, but added an exemption for blood glucose monitoring supplies, which was defined to include blood glucose meters. Since blood glucose meters fall within the definition of durable medical equipment, they cannot be singled out for exemption.
5. The citation given does not address the due date for payments if the Federal Reserve Bank is closed.

Indiana response:

Indiana indicated that the exemptions for certain federal taxes need a legislative change.

With respect to the rounding rule, the state had concerns that a seller could split transactions where items are normally sold together (1,000,000 nails sold for four cents each) in order to avoid the tax and had not changed the statute.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

The Indiana Department of Revenue has embarked on a major software and data collection archive upgrade in 2013 to expand its electronic filing capabilities and administration for more of Indiana's listed taxes. Successful completion of that upgrade should allow all sellers to file SERs sometime in 2014.

The exemption that includes blood glucose meters was intended to bring the state into compliance with the definition of “durable medical equipment.”

With respect to Issue 5, the state recognizes the days the Federal Reserve Bank is closed as a national holiday and agreed to add the following comment to their Certificate of Compliance: “The term 'a national legal holiday recognized by the federal government' in IC 6-8.1- 6-2 includes a day that the Federal Reserve Bank is closed.”

Iowa

Finding: CRIC recommends that Iowa be found not out-of-compliance with the Agreement.

Vote: 6-0; Atchley, Cram, Fox, Jennrich, Noble, Vosberg (Paxton abstained)

The only issue raised related to whether or not Iowa could accept SERs from non-SST registrants. Iowa explained that they can accept them, but because of the manual processes currently involved with processing them, they have asked people not to send them in at this time. They are working on a system upgrade and anticipate being able to accept them shortly after the first of next year.

Kansas

Finding: CRIC recommends that Kansas be found not out-of-compliance with the Agreement. There were no issues identified.

Vote: 6-0; Atchley, Fox, Jennrich, Noble, Paxton, Vosberg (Cram abstained)

Kentucky

Finding: CRIC recommends that Kentucky be found not out-of-compliance with the Agreement. There were no issues identified.

Vote: 6-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, (Vosberg absent)

Michigan

Finding: CRIC finds that Michigan remains out-of-compliance with the Agreement with respect to Issue 1. The state was found not out-of-compliance on Issue 2.

Vote: 6-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, (Vosberg absent)

Compliance Review and Interpretation Committee
2013 Compliance Review Report

Issues raised:

1. The state was declared out of compliance with respect to the sourcing rules and definitions for “advertising and promotional direct mail” and “other direct mail” which have not been adopted.
2. The statutes cited do not address due dates when the Federal Reserve Bank is closed.

Michigan response:

The state agreed that they needed to change their statute with respect to the direct mail provisions and definitions. Legislation has been drafted and submitted.

With respect to Issue 2, the state administers the statute to include days the Federal Reserve Bank is closed.

Minnesota

Finding: CRIC recommends that Minnesota be found not out-of-compliance with the Agreement.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

Issues raised:

1. Repair and replacement parts for durable medical equipment for single patient use are marked taxable but the statute appears to exempt them.
2. The citations given for payments due on days the Federal Reserve Bank is closed only address Saturdays, Sundays and legal holidays.

Minnesota response:

The state explained that repair and replacement parts for durable medical equipment for single patient home use are exempt. Repair and replacement parts for non-home use are taxable. The state will add a comment to the Taxability Matrix that home use repair and replacement parts are exempt.

With respect to Issue 2, the state administers the statute to include days the Federal Reserve Bank is closed.

Note: The state was found by the Governing Board to be not out-of-compliance in 2012 because the definition of prepared food includes food sold without eating utensils in an unheated state by weight or volume as a single item, but exempts ready-to-eat meat and seafood in an unheated state sold by weight. This issue was raised again by the BAC. Minnesota indicated that they do have proposed legislation to update their statutes on this issue and can hopefully resolve this in the near future.

Nebraska

Finding: CRIC recommends that Nebraska be found not out-of-compliance with the Agreement.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

Vote: 6-0; Atchley, Cram, Fox, Jennrich, Paxton, Vosberg (Noble absent)

Issue raised:

1. The citation given for payments due on a Saturday or Sunday and for days the Federal Reserve Bank is closed only refers to legal banking holidays.

Nebraska response:

The state administers the statute to include days the Federal Reserve Bank is closed.

A couple suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. Nebraska made the changes and submitted an updated Taxability Matrix and Certificate of Compliance.

Nevada

Finding: CRIC recommends that Nevada be found to remain out-of-compliance with the Agreement regarding the direct mail sourcing provisions and relief of the seller's obligation to collect tax if it receives a direct pay permit or an Agreement certificate of exemption claiming "direct mail" (Issue 4 below). Issues 1, 2, and 3 were resolved.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

Issues raised:

1. The citation given allows 45 days to petition for a redetermination after being served a notice of determination. The Agreement provision requires 30 days notice before establishing a liability amount.
2. According to the citation given, the state excludes any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer from sales price. Federal taxes imposed on the seller should be included in the sales price according to the definition in the Agreement.
3. The question was raised as to whether the state can accept the SER from all taxpayers.
4. The state was found out-of-compliance by the Governing Board with the direct mail sourcing provisions in 2011 because state statute requires in-state business to collect the tax regardless the documentation provided.

Nevada response:

The state explained that liability is not established until the 45 days expires in Issue 1.

With respect to Issue 2, the statutes in s. 372 must be administered in compliance with s. 360B, which provides that the total sales price includes all taxes imposed on the seller.

With respect to Issue 3, the state indicated that they can accept SERs from all taxpayers now.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

With respect to the direct mail issue (Issue 4), the state now believes the statute has an internal conflict and has plans for legislation to remove the language in question. In the meantime, they have administered the statute as provided in the Agreement and agreed to post a technical bulletin to clarify their position. The department recently was granted authority to issue technical bulletins.

New Jersey

Finding: CRIC recommends that New Jersey be found not out-of-compliance with the Agreement.

Vote: 5-0; Atchley, Cram, Jennrich, Paxton, Vosberg (Noble absent and Fox abstained)

Issues raised:

1. The due dates for when the Federal Reserve is closed.
2. Unsure if New Jersey can accept SERs from all sellers.

New Jersey Response:

The state administers the statute for when the Federal Reserve is closed consistent with how it is administered for dues dates that fall on other holidays.

With respect to Issue 2, New Jersey accepts SERs from SST and non-SST sellers as long as they have completed the testing.

A couple suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. New Jersey made the suggested changes and submitted an updated Taxability Matrix and Certificate of Compliance.

North Carolina

Finding: CRIC recommends that North Carolina be found not out-of-compliance with the Agreement.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

Issues raised:

1. The state has not adopted the new direct mail sourcing rules. As a result, other direct mail may not be sourced correctly.
2. The due dates for when the Federal Reserve is closed.

North Carolina response:

The state advised that the statute had not been changed to add the other direct mail sourcing provisions, until after August 1. However, the legislation has now been signed and North Carolina has also prepared a notice to further clarify this issue as well.

The state administers the statute for when the Federal Reserve is closed consistent with how it is administered for dues dates that fall on weekends and holidays.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

A couple suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. North Carolina made the changes and submitted an updated Taxability Matrix and Certificate of Compliance.

North Dakota

Finding: CRIC recommends that North Dakota be found not out-of-compliance with the Agreement.

Vote: 5-0; Atchley, Cram, Fox, Jennrich, Paxton (Noble absent and Vosberg abstained)

A couple suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. North Dakota made the changes and submitted an updated Taxability Matrix and Certificate of Compliance.

Ohio

Finding: None.

Note: CRIC did not review Ohio's compliance since they had just undergone a full review and were approved as a full member at the Governing Board meeting in October 2013. Ohio's full membership is effective January 1, 2014.

Oklahoma

Finding: CRIC recommends that Oklahoma be found not out-of-compliance with the Agreement.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

The only issue raised was a typo contained in Oklahoma's statutes where the word "of" should be "or." The BAC indicated that they had no concerns with this.

Rhode Island

Finding: CRIC recommends that Rhode Island be found out-of-compliance with the Agreement with respect to Issue 1. Issue 2 was resolved.

Vote: 6-0; Atchley, Cram, Fox, Jennrich, Paxton, Vosberg (Noble absent)

Issues raised:

1. Effective 10/1/2012, the first \$250 of the sales price for an article of clothing is exempt from tax. Any amount above that is taxable.
2. A question was raised as to whether the state can receive SERs from all taxpayers.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

Rhode Island response:

The state's position is that it is not out of compliance with the SSUTA, based on the language of Section 323.A. They do not believe there has been any additional burden on the retailer as a result of this legislation, (i.e. caps and thresholds are allowed during authorized sales tax holidays.) Also, under Section 103, a member state's taxing authority is preserved whereby the SSUTA shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service.

With respect to Issue 2, the state can receive SERs from all taxpayers who are properly registered with the state.

South Dakota

Finding: CRIC recommends that South Dakota be found not out-of-compliance with the Agreement.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

Only issue raised was a suggested change to a citation on the Certificate of Compliance. South Dakota agreed and submitted a revised Certificate of Compliance.

Tennessee

Finding: CRIC makes no recommendation regarding Tennessee as an Associate Member state. Issue 1 was resolved. With respect to Issue 2, the Governing Board referred the issue of Tennessee's compliance to the Executive Board in 2011. The Executive Committee has taken no action. The issues remain the same.

Vote: 6-0; Atchley, Cram, Fox, Jennrich, Paxton, Vosberg (Noble absent)

Issues raised:

1. The citation given for amnesty from states to sellers registered with Streamlined before the state joins is for amnesty for sellers who were registered in the state prior to the state becoming a member. The provision in the Agreement relates to sellers who were registered in the centralized registration system (not the state). Should the response still be "No"?
2. The effective date for the legislation implementing most of the changes needed to become a full member state has been extended to 7/1/2015. The 2013 recertification letter lists those issues and also lists issues that are not included in the legislation that is effective 7/1/2015.

Tennessee response:

With respect to Issue 1, the state became an associate member the first year so there would be no sellers registered before the state joined. The effective date for legislation to bring the state into conformance with the Agreement has been extended until 2015.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

Utah

Finding: CRIC recommends that Utah be found not out-of-compliance with the Agreement.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

A couple suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. Utah made the changes and submitted an updated Taxability Matrix and Certificate of Compliance.

Vermont

Finding: CRIC recommends that Vermont be found not out-of-compliance with the Agreement.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

1. The citation for payments due on a day the Federal Reserve Bank is closed only addresses state or Federal legal holidays. The comment indicates that the next day provision only applies if the bank is closed on a weekend or legal holiday.

Vermont response:

The state administers the statute to include days the Federal Reserve Bank is closed.

A couple suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. Vermont made the changes and submitted an updated Taxability Matrix and Certificate of Compliance.

Washington

Finding: CRIC recommends that Washington be found not out-of-compliance with the Agreement.

Vote: 6-0; Atchley, Cram, Fox, Noble, Paxton, Vosberg (Jennrich abstained)

The “prepared food” issue described in the introductory section at the beginning of this report was raised during Washington’s review, but the issue was not considered for the 2013 annual recertification as explained above.

West Virginia

Finding: CRIC recommends that West Virginia be found not out-of-compliance with the Agreement.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

Some citation changes to WV’s Certificate of Compliance and Taxability Matrix were requested and updated documents were submitted.

Compliance Review and Interpretation Committee
2013 Compliance Review Report

Discussed changes to tax treatment of certain telecom services from last year to this year as indicated on Taxability Matrix. WV Legal staff had reviewed and determined proper taxability and that is reflected in the Taxability Matrix that was submitted.

Wisconsin

Finding: CRIC recommends that Wisconsin be found not out-of-compliance with the Agreement.

Vote: 7-0; Atchley, Cram, Fox, Jennrich, Noble, Paxton, Vosberg

A couple changes to the citations on the Taxability Matrix were suggested. Wisconsin agreed and submitted a revised Taxability Matrix.

The “prepared food” issue described in the introductory section at the beginning of this report was raised during Wisconsin’s review, but the issue was not considered for the 2013 annual recertification as explained above.

Wyoming

Finding: CRIC recommends that Wyoming be found not out-of-compliance with the Agreement.

Vote: 6-0; Atchley, Cram, Fox, Jennrich, Paxton, Vosberg (Noble Abstained)

Issue raised:

1. The citation for payments due when the due date falls on Saturday, Sunday, legal holiday or day Federal Reserve Bank is closed refers to using the postmark.

Wyoming response:

The state uses the date the payment is submitted as the postmark for electronic payments. The state administers the statute to include days the Federal Reserve Bank is closed.

A couple suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. Wyoming made the changes and submitted an updated Taxability Matrix and Certificate of Compliance.