

To: Diane Hardt, President  
Streamlined Sales Tax Governing Board

From: Compliance Review and Interpretations Committee  
Myles Vosberg, Chairman

Subject: 2014 Compliance Review Report

Date: November 28, 2014

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, as well as suggested clarifications or corrections to the citations on the certificates of compliance and taxability matrix. 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 2013 review that had not been resolved by the August 1, 2014 recertification date and, therefore, were not considered during the 2014 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. Work is ongoing and SLAC is continuing to monitor federal legislation in this area.
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

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service. CRIC recommends the issue be assigned to SLAC or the Executive Committee to seek a final resolution.

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.

Two issues were discussed that did not affect the states' compliance. The issues are as follows:

1. A toggle was added under the prepared food definition to allow states to exclude food sold that ordinarily requires additional cooking (as opposed to just reheating) by the consumer prior to consumption. The states that indicated they allowed this exclusion were asked whether this position was documented elsewhere. The states have until January 1, 2017 or the first day of the calendar quarter following one full session of the state's legislature before any sanctions can be considered with respect to this issue.
2. Section 328 of the Agreement was amended to add a provision providing that if a member state amends an existing provision of its taxability matrix, the member state shall, **to the extent possible**, relieve sellers and CSPs from liability to the member state and its local jurisdictions until the first day of the calendar month that is at least 30 days after notice of a change to a member state's taxability matrix is submitted to the governing board, provided the seller or CSP relied on the prior version of the taxability matrix. This is not a compliance issue because of the "to the extent possible" language. For clarification purposes, states that indicated that they do provide such relief were asked if this position was documented elsewhere if no citation was included on the Certificate of Compliance.

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.

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**State Action:**

**Arkansas**

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

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

Issues:

Over-the-counter drugs with prescription is marked taxable and grooming and hygiene products that meet drug definition with prescription is marked exempt. The state indicated that grooming and hygiene products that can only be sold with a prescription are exempt. All over-the-counter drugs with or without a prescription and all other grooming and hygiene products are taxable.

Act 1414 exempts "dental appliances" effective 7/1/2014. Dental appliances are defined to include "dental implant, orthodontic appliance, retainer, crown, bridge, or denture," all of which are dental prosthesis's. The Act does not require a prescription. Dental prosthesis are marked taxable on the Taxability Matrix. The state advised that the sale of a dental appliance is exempt when the appliance is made for a specific patient. Therefore, dental prosthesis without a prescription is marked taxable while dental prosthesis with a prescription is marked exempt. A statutory citation and an explanatory comment have been added.

Arkansas indicated on the Certificate of Compliance that the state provides relief from liability until the first day of the calendar month that is at least 30 days after notice of a change to the state's taxability matrix. The citation given did not address this issue. The citation on the Certificate of Compliance has been changed.

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

**Georgia**

Finding: CRIC finds that Georgia remains out-of-compliance with the Agreement on the local tax base, exemption administration and SER issues.

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

Issues:

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 originally was found out of compliance on this issue in 2012.

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The legislature in 2012 reinstated the “good faith” requirement for accepting exemption certificates. The legislature did not make any change to this provision during the last legislative session.

The state accepts the SER from Model 1 sellers only. The SER has limitations in its schema that will not accommodate correct vendor compensation for sellers with multiple locations. Such sellers receive more vendor compensation if they do not use the SER. CRIC recommends that the Certification Committee look at the schema change issue.

Georgia indicated on the Certificate of Compliance that the state provides relief from liability until the first day of the calendar month that is at least 30 days after notice of a change to the state’s taxability matrix. This is a policy position and is not explicitly documented elsewhere.

Over -the-counter drugs with prescription is marked taxable and grooming and hygiene products that meet drug definition with prescription is marked exempt. The state indicated that grooming and hygiene products that can only be sold with a prescription are exempt. All over-the-counter drugs with or without a prescription and all other grooming and hygiene products are taxable. A comment was included to clarify the issue.

A few 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 finds that Indiana remains out-of-compliance with the Agreement on the issues of federal taxes being excluded from sales price and of not accepting the SER from all sellers.

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

Issues:

The Federal Manufacturer's Tax and Federal Retailer's Excise Tax are exempt from the sales tax. The state is continuing to examine the remaining excise taxes and the issue has been put on the agenda to be looked at this year.

The state was declared out of compliance in 2011, 2012 and 2013 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.

**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)

Issues:

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Iowa excludes food sold without eating utensils that ordinarily requires cooking prior to consumption from prepared food. The state has published a policy letter and intends to introduce legislation to clarify the issue.

Iowa indicated on the Certificate of Compliance that the state provides relief from liability until the first day of the calendar month that is at least 30 days after notice of a change to the state's taxability matrix. This position is not explicitly documented elsewhere and the state intends to introduce legislation to clarify this area.

There was a suggested change to the Certificate of Compliance. Iowa agreed and submitted a revised Certificate of Compliance.

**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.

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

A few suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. Kentucky made most of the changes and submitted an updated Taxability Matrix and Certificate of Compliance. They explained that they do have a rate and boundary database even though they do not have local taxing jurisdictions. There was also an error on the Certificate of Compliance with respect to acceptance of the SER. Kentucky does accept the SER from all sellers.

**Michigan**

Finding: CRIC finds that Michigan remains out-of-compliance with the Agreement with respect to the direct mail sourcing issue.

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

Issues:

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. Draft legislation has been submitted.

A few suggested changes to citations on the Taxability Matrix were made. Michigan made the changes and submitted an updated Taxability Matrix.

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**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:

Grooming and hygiene products with prescription marked exempt on the Taxability Matrix, but the definition of over-the-counter drugs excludes grooming and hygiene products. The exemption for drugs includes over-the-counter drugs. The state advised that grooming and hygiene products that can only be obtained with a prescription are exempt. They have published this information on their website and noted this in the matrix.

Minnesota indicated on the Certificate of Compliance that the state provides relief from liability until the first day of the calendar month that is at least 30 days after notice of a change to the state's taxability matrix. The state indicated that this is standard practice and that there are broad relief provisions in the statutes.

A few suggested changes to citations on the Certificate of Compliance and Taxability Matrix were made. Minnesota made the needed changes and submitted an updated Taxability Matrix and Certificate of Compliance.

**Nebraska**

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

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

Issues:

Nebraska excludes food sold without eating utensils that ordinarily requires cooking prior to consumption from prepared food. The state indicated that an amendment to the statutes will be required.

There was a suggested change to a citation on the Certificate of Compliance. Nebraska agreed and submitted a revised Certificate of Compliance.

**Nevada**

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

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

Issues:

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The state has not adopted a provision requiring 120 day notice of rate changes for catalog sales. Local jurisdictions cannot change their rate without legislative approval. Nevada indicated that the enabling legislation for any local rate changes would include this provision.

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

**New Jersey**

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

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

Issues:

The definitions for "advertising and promotional direct mail" and "other direct mail" have not been adopted. The sourcing for other direct mail has not been adopted. That state indicated that it specifically taxes advertising and promotional direct mail and does not tax other direct mail. The Certificate of Compliance was updated to add a clarifying comment and submitted.

New Jersey indicated on the Certificate of Compliance that the state provides relief from liability until the first day of the calendar month that is at least 30 days after notice of a change to the state's taxability matrix. The state changed its answer to "No" and added a comment that relief may be granted on a case by case basis.

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

A few 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, Nobel, Jennrich, Paxton (Fox absent and Vosberg abstained)

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Issue:

North Dakota excludes food sold without eating utensils that ordinarily requires cooking prior to consumption from prepared food. The state indicated that it will update their guidelines to clearly state this position. In addition, legislation to adopt the new toggle will be requested.

**Ohio**

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

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

Issues:

Ohio became a full member state 1/1/14 and should provide amnesty to companies registered in the SST centralized system prior to that date. No citation was given and it was unclear if amnesty was being given. The state indicated that amnesty was allowed and the proper citation was added.

Ohio indicated on the Certificate of Compliance that the state provides relief from liability until the first day of the calendar month that is at least 30 days after notice of a change to the state's taxability matrix. The state indicated that this is an administrative practice and is not documented elsewhere.

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

**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

Issues:

Oklahoma indicated on the Certificate of Compliance that the state provides relief from liability until the first day of the calendar month that is at least 30 days after notice of a change to the state's taxability matrix. This position was published in a notice and the state intends to submit a rule to document the policy. The Certificate of Compliance has not been updated to include the notice in the citations.

A suggested change to the Certificate of Compliance was made. Oklahoma agreed to the change. The Certificate of Compliance has not been updated.

**Rhode Island**

Finding: CRIC finds that Rhode Island remains out-of-compliance with the Agreement with respect to the clothing cap and threshold issue.

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

Issues:

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. There has been no change to the statute. The statute provides that upon passage of any federal law which requires remote sellers to collect and remit taxes, the full exemption for clothing will apply once again, and the threshold will expire. The state does not believe this imposes an additional burden on sellers.

A couple of citation changes to Rhode Island's Certificate of Compliance were requested and updated documents were submitted.

**South Dakota**

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

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

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 recommends that Tennessee be found not out-of-compliance with the Agreement.

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

Only issue raised was a suggested change to a citation on the Taxability Matrix. Tennessee agreed and submitted a revised Taxability Matrix.

**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 suggested change to citations on the Certificate of Compliance was made. Utah made the change and submitted an updated Certificate of Compliance.

**Vermont**

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

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

Only issue raised was a suggested change to a citation on the Taxability Matrix. Vermont made the change and submitted an updated Taxability Matrix.

**Washington**

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

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

**West Virginia**

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

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

Issues:

West Virginia excludes food sold without eating utensils that ordinarily requires cooking prior to consumption from prepared food. A request to have the legislature address the issue in the state's code has been sent to the legislature.

A couple of citation changes to West Virginia's Taxability Matrix were requested and updated documents were submitted.

**Wisconsin**

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

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

**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)

Issues:

Wyoming indicated on the Certificate of Compliance that the sourcing provisions for other direct mail had been adopted. No citation was given for the general rule and the citation for sourcing other direct mail otherwise only addressed advertising and promotional direct mail. The state advised that other direct mail is not taxable and agreed to change the "yes" to "no" and add a comment to that effect.

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