

# Streamlined Sales Tax Governing Board, Inc.

To: Richard Dobson, President  
Streamlined Sales Tax Governing Board

From: Compliance Review and Interpretations Committee  
Myles Vosberg, Chairman

Subject: 2016 Compliance Review Report

Date: November 22, 2016

The Compliance Review and Interpretations Committee (CRIC) has completed its annual recertification review of member states in accordance with Rule 803 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. (Note: The staff also contacted states regarding suggested clarifications or corrections to the citations on the certificates of compliance and taxability matrix. These types of items were not included on the report if the state made the necessary changes and submitted a revised taxability matrix or certificate of compliance as needed.) 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. No written comments were submitted. 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 two public hearings during which each state responded to the staff and public regarding any issues of noncompliance. 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 2015 review that had not been resolved by the August 1, 2016 recertification date and, therefore, were not considered during the 2016 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 on this issue was put on hold and the Governing Board 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 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 by the State and Local Advisory Council's Remote Access to Prewritten Computer Software Workgroup. No final decision was made and accordingly, CRIC has deferred this issue. The Business Advisory Council has indicated that it was amenable to the continued deferral of the issue, but has noted that their agreement should not be interpreted as acceptance to statements made by the member states on the issue.

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; Harper, Jennrich, Steines, Thompson, Vosberg (Atchley abstained)

#### **Georgia**

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

Votes:

- Local tax base issue: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg
- Exemption administration issue: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

- Acceptance of the SER issue: 5-1; Yes: Atchley, Harper, Jennrich, Steines, Vosberg; No: Thompson

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. (**Note:** The state and members of the BAC and SLAC worked together to draft a proposed amendment to add an exclusion for energy used in manufacturing to Sections 302 and 308 of the Agreement. The amendment was considered and adopted at the October 2016 Governing Board meeting. Therefore, this is no longer a compliance issue for Georgia.)

The legislature in 2012 reinstated the “good faith” requirement for accepting exemption certificates and the state was originally found out of compliance on this issue in 2013. The legislature did not make any change to this provision during the last legislative session. The Department of Revenue is actively working with their Legislature to resolve this issue.

The state accepts the SER from Model 1 sellers only and was originally found out of compliance on this issue in 2013. The SER has limitations in its schema that will not allow the correct vendor compensation to be computed for sellers with multiple locations in Georgia. Such sellers receive more vendor compensation if they do not use the SER. The state indicated that the only requests for use of the SER by other than Model 1 sellers have come from the Certified Service Providers. CRIC recommends that the Certification Committee consider a possible schema change to help address this issue.

Indiana

Finding: CRIC finds that Indiana remains out-of-compliance with the Agreement on the issue of not accepting the SER from all sellers.

Vote: 5-1; Yes: Atchley, Harper, Jennrich, Steines, Vosberg; No: Thompson

Issue:

The state was found out of compliance in previous years because they cannot accept the SER from Model 4 sellers. The state also cannot accept SERs from sellers who are not registered through the Streamlined central registration system. Indiana is working to implement changes and anticipates those changes will be implemented in the first quarter of 2017 to allow Model 4 and sellers not registered under the Agreement to use the SER. The state indicated that the only requests for use of the SER by other than Model 1 sellers have come from the Certified Service Providers.

Iowa

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Kansas**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Kentucky**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Michigan**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Minnesota**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Nebraska**

Finding: CRIC recommends that Nebraska be found out-of-compliance with the Agreement on the issue of classifying certain medical products in a manner inconsistent with Appendices L and M to the SSTGB Rules that classify various health care related products under the appropriate defined terms. There were no other issues identified. (Note: The initial compliance report also noted that Nebraska did not have a written position to indicate that it did not tax “food that otherwise would be prepared food, except that it required additional cooking.” Nebraska has until January 1, 2017 to come into compliance with this provision. Effective October 1, 2016, this position is now contained in Neb. Rev. Stat. §77-2704.24(2)(e)(ii)(F) and is not a compliance issue.)

Vote: 5-0; Atchley, Harper, Jennrich, Steines, Vosberg (Thompson abstained)

**Issue:**

Nebraska has identified four items (gastric bands, implanted expander – tissue and breast, intragastric balloons and wheelchair cushions) contained in the medical products listings

(Appendices L and M to the SSTGB Rules and Procedures) that were approved by the Governing Board which it classifies differently than indicated in the Appendices. This is the first year the Compliance Checklist included a reference to the product listings in Appendices L and M that the Governing Board had adopted in 2006 and 2007. The listings consist of approximately 320 medical products and identifies the defined term from the SSUTA (if any) under which each of the products is classified or whether the product is not classified under one of the defined medical product terms in the Library of Definitions.

Nebraska indicated the term “substantial compliance” is not defined in the SSUTA. Two decisions by the Issue Resolution Committee determined that substantial compliance does not mean exact compliance and that a state may depart from the exact terms if the departure does not increase the burden on any taxpayer or the burden is de minimus. See IRC Decisions [2010-1](#) and [2011-1](#). In 2012, CRIC recommended that Minnesota be found not in compliance on its issue of taxing “prepared food” but exempting ready to eat meat and seafood products which are a subcategory of “prepared food.” The Governing Board did not adopt this recommendation and Minnesota was found to be in compliance in [2012](#). However, it was pointed out that the “prepared food” issue was discussed prior to the SSUTA being adopted and Minnesota had noted this exception on their annual compliance documents each year since they had been a member.

The Business Advisory Committee expressed concern that Appendices L and M, which have Governing Board approval, have been interpreted differently by Nebraska.

#### **Nevada**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

#### **New Jersey**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

#### **North Carolina**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

#### **North Dakota**

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

Vote: 5-0; Atchley, Harper, Jennrich, Steines, Thompson (Vosberg abstained)

**Ohio**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Oklahoma**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Rhode Island**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**South Dakota**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Tennessee (Associate Member State)**

Finding: CRIC recommends that Tennessee be found not out-of-compliance with the requirements of the Agreement as an Associate Member State.

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Utah**

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

Vote: 5-0; Atchley, Jennrich, Steines, Thompson, Vosberg (Harper abstained)

**Vermont**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Washington**

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

Vote: 5-0; Atchley, Harper, Steines, Thompson, Vosberg (Jennrich abstained)

**West Virginia**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg

**Wisconsin**

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

Vote: 5-0; Atchley, Harper, Jennrich, Thompson, Vosberg (Steines abstained)

**Wyoming**

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

Vote: 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg