

Streamlined Sales Tax Governing Board, Inc.

To: Senator Dwight Cook, President
Streamlined Sales Tax Governing Board

From: Compliance Review and Interpretations Committee
Myles Vosberg, Chairman

Subject: 2017 Compliance Review Report

Date: October 25, 2017

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 online certificate of compliance and taxability matrix.

Governing Board staff made an initial review of each state's certificate 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 one public hearing on October 3, 2017, during which each state responded to the CRIC members, Governing Board staff and public regarding any issues of noncompliance. The public was also given an opportunity to comment or raise other concerns with states' compliance. CRIC took a public vote on whether each state was or was not out-of-compliance with the Agreement pursuant to Section 805. For states with multiple issues, CRIC took separate votes on each issue.

Three issues were carried over from the 2016 review that had not been resolved by the August 1, 2017 recertification date and, therefore, were not considered during the 2017 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

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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 recommended 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; Jennrich, Noble, Steines, Thompson, Vosberg (Atchley abstained)

Georgia

Finding: CRIC finds that Georgia remains out-of-compliance with the Agreement on the exemption administration and SER acceptance issues. The state was also found out of compliance with respect to a newly enacted cap of \$35,000 in tax on boat repairs. The state was

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found not out of compliance with respect to a change in the law which for one county extended the exemption for food to an equalized homestead option sales tax if passed in the future by referendum.

Votes:

- Exemption administration issue (not in compliance): 6-0; Atchley, Harper, Jennrich, Steines, Thompson, Vosberg
- Acceptance of the SER issue (not in compliance): 5-1; Yes: Atchley, Harper, Jennrich, Steines, Vosberg; No: Thompson
- Cap of tax on boat repairs issue (not in compliance): 4-2; Yes: Atchley, Jennrich, Steines, Vosberg; No: Harper, Thompson
- Local food exemption for a single local tax (not out of compliance): 6-0; Yes: Atchley, Harper, Jennrich, Steins, Thompson, Vosberg

Issues:

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 Department of Revenue is actively working with their Legislature to resolve this issue.

The state accepts the SER from Model 1 sellers only. The SER has limitations in its schema that will not allow the (1) correct vendor compensation to be computed for sellers with multiple locations in Georgia and (2) correct reporting of differences in the state and local tax bases that are allowable under Section 302 of the Agreement. Sellers receive more vendor compensation for local taxes if they do not use the SER. The Executive Director indicated that per Section 318 of the Agreement, a state is not required to accept the SER from sellers of products qualifying for exclusion from the provisions of Section 308 of the Agreement. In addition, the Certification Committee is looking at possible revisions to the SER schema to address the Section 302 issues. 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 agrees that the Certification Committee should consider a possible schema change to help address at least part of this issue.

During the 2017 session, the legislature enacted a cap of \$35,000 in tax (\$500,000 in sales) on boat repairs. The provision was intended as a tax incentive measure to attract a repair facility to the state which would create high paying jobs. There are currently no facilities which can accommodate vessels large enough to incur such costs of repairs, but interest in building such a facility has been expressed by one taxpayer.

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During the 2017 session, the legislature extended the exemption for food to an equalized homestead option sales tax if such local tax is passed in the future by referendum. This provision is intended for one county. Food is not exempted from other local sales taxes.

Indiana

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

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

Iowa

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

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

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Nebraska

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

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

Nevada

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

Vote: 6-0; Atchley, Noble, 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, Noble, 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, Noble, 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, Noble, Jennrich, Steines, Thompson (Vosberg abstained)

Ohio

Finding: CRIC recommends that Ohio be found not out-of-compliance with the Agreement. There was one issue identified. The state provided insufficient notice in June, 2017, for a sales tax holiday that was held in August, 2017.

Vote: 7-0; Atchley, Harper, Noble, Jennrich, Steines, Thompson, Vosberg

Issue:

Ohio was unable to provide sufficient notification of a sales tax holiday as required in Section 322 of the Agreement because of the timing of legislation approval. The same legislation enacted a holiday to be held in 2018, which will be noticed on the Department of Revenue's website.

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Because the August, 2017, holiday had already taken place and it is anticipated that adequate notice will be provided for the 2018 sales tax holiday, CRIC recommends Ohio be found not out-of-compliance at this time.

Oklahoma

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

Vote: 6-0; Atchley, Noble, 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, Noble, 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, Noble, 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. There were no issues identified.

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

Vermont

Finding: CRIC recommends that Vermont be found not out-of-compliance with the Agreement. There was one issue identified. Disclosed Practice 6 was not completed on the Taxability Matrix.

Vote: 7-0; Atchley, Harper, Noble, Jennrich, Steines, Thompson, Vosberg

Issue:

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Vermont did not complete Disclosed Practice 6 on the Taxability Matrix by August 1 as required by Rule 803. However, Vermont completed Disclosed Practice 6 on the Taxability Matrix submitted August 25th and CRIC recommends Vermont be found not out-of-compliance at this time.

Washington

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

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