

BAC

Business Advisory Council

October 26, 2009

Compliance Review and Interpretations Committee {Sent Via E-Mail}
C/O Scott Peterson, Executive Director
4205 Hillsboro Pike, Suite 305
Nashville, TN 37215

Re: Public Comment on State Compliance Issues

Dear Mr. Peterson:

This letter comments on the member states' compliance with the Streamlined Sales and Use Tax Agreement ("Agreement"). Please note that the comments addressed below are not all inclusive and other Business Advisory Council ("BAC") members may have additional or different comments. The opportunity to raise these comments to the Compliance Review and Interpretation Committee ("CRIC") is appreciated. Before addressing the compliance issues with each state, the BAC wants to first thank CRIC for agreeing to use the following review process this year and to support changes to Rule 905 for future years. This process addresses many of the procedural issues raised by the BAC in its November 1, 2008 letter.

Agreed to Review Process

CRIC Evaluation and Report

On or before October 26, 2009 the states and the public can submit written comments to CRIC, via the SSUTA's Executive Director, regarding the annual compliance review and the SSUTA Staff's report dated September 24, 2009. The states and the public have until November 10, 2009 to respond to comments submitted by October 26, 2009. If CRIC accepts any statements after November 10, 2009, the state subject to the statement and the public shall have a reasonable opportunity to comment.

On or before November 30th of this year, CRIC will issue its final report to the Governing Board. Such report shall: (1) summarize, as practical, the comments received from the member states and the public, (2) describe how CRIC addressed those comments and (3) state how each CRIC member voted.

CRIC Review Standards

1. **Scope of Review.** The member states' annual recertification of compliance covers all aspects of the Agreement, including any applicable rules and interpretations, and is not limited to changes made in the prior year.

2. Determination of Compliance. (a) A member state is presumed to be in compliance with each provision of the Agreement. Except as provided in subparagraph (2)(b), if documentation is provided to CRIC indicating a state is not in compliance, such state has an affirmative duty to explain how it is in compliance.

(b). If an issue of a state's compliance has previously been raised against a state for which it was found in compliance that was the subject of a prior unsuccessful challenge under this paragraph, such state need only respond that it previously was held in compliance on that same issue. CRIC and the Governing Board, however, must take into consideration any documentation that supports such state is not in compliance.

3. Reliance. The determination of a member state being in compliance shall be based only on a review of the state's laws, regulations and/or written policies; such provisions listed in order of preference and reliance. Legislation shall be relied upon only if it has passed both legislative chambers (or the legislative chamber for a unicameral state) and there is no known threat of a Governor's veto. A regulation shall be relied upon only if it has been fully adopted. A written policy shall be relied upon only if it is publicly accessible through the state revenue agency's website.

State Compliance Issues

General Comment: Section 809(B) only prohibits a state from being subject to sanctions for failing to comply with a change to the Agreement until the later of January 1 at least two years after the Agreement was amended or the first day of a calendar quarter following the end of one full session of the state's legislature. Thus, a state is technically out of compliance with the Agreement if it had not adopted a change to the Agreement, but it cannot be sanctioned for its noncompliance. One known change to the Agreement effective immediately was the addition of subsections (C), (D) and (E) to Section 304 of the Agreement requiring the states to provide some relief to sellers provided with less than 30 days notice of a state changing its tax rate. It is the BAC's position that each state needs to incorporate this relief in its laws and/or regulations; however, the intent was to give the states at least one full legislative session (or two years) to comply. Based on that intent and the hope that a proposed amendment to Section 809 to fix this problem will obtain enough votes of the Governing Board (AM09009), the BAC, at this time, has not raised issues with any amendment to the Agreement that a state still has time to adopt prior to the period set forth in Section 809(B) of the Agreement.

The following are compliance issues with each state. The BAC focus this year was on the states' compliance with Section 317 of the Agreement.

Arkansas

- No compliance issues, however, the BAC would like to have the Streamlined Sales Tax Exemption Certificate on its website

Indiana

- BAC agrees with the compliance issues raised in the preliminary report submitted to CRIC on September 24, 2009

Iowa

- BAC agrees with the compliance issues raised in the preliminary report submitted to CRIC on September 24, 2009
- BAC is also concerned that rule changes to address compliance issues raised in the 2008 review need to be addressed by amending the Iowa Code

Kansas

- Requirements for a fully completed exemption certificate pursuant to KSA §§79-3651(c) and (f) exceed those required in Section 317 of the Agreement
- Unable to verify (in a law or regulation) that the Streamlined Sales Tax Exemption Certificate posted on its website is prescribed for use in Kansas

Kentucky

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009
- BAC is uncertain (1) if the use of Form 51A260 satisfies the good faith requirement pursuant to KRS §139.270 and (2) if just capturing the data elements of the Streamlined Sales Tax Exemption Certificate is sufficient to document an exemption
- 120 day period for seller to obtain fully completed exemption certificate upon request was not found, only the 90 day period (see KRS §139.270)
- Potential issue with video games being defined in the digital product definition

Michigan

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009
- Not a compliance issue, the BAC would like to have the Streamlined Sales Tax Exemption Certificate posted on Michigan's website

Minnesota

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009

Nebraska

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009

- Requirements for “proper” completion (“fully completed” verbiage not used) exceed those required pursuant to the Agreement

Nevada

- No ability to pay using ACH credit – continued problem that has not been cured
- There is a regulations hearing pending on November 9 before the Nevada Tax Commission to address these issues, however, issues raised by the BAC in its petition for resolution dated July 13, 2009 still exist as of the date of this letter (*e.g.*, use of exemption certificate and “good faith,” leasing transactions, non-streamlined sales tax chapter takes precedent over streamlined sales tax chapter)

New Jersey

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009

North Carolina

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009
- Section 317 of the Agreement has two time periods (90 and 120 days) for sellers to obtain exemption certificates – these time periods are not in North Carolina’s law – but compliance with Section 317 is referenced in the instructions section on the exemption certificate form (Form E-595E)
- Exemption certificates for over-the-counter sales limited to sales of property typically sold by the type of business stated on the certificate

North Dakota

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009
- Not a compliance issue, the BAC would like to have the Streamlined Sales Tax Exemption Certificate posted on North Dakota’s website

Ohio

{Not required to recertify}

Oklahoma

- BAC agrees with the compliance issue in the preliminary report submitted to CRIC on September 24, 2009 regarding Oklahoma not having a provision to source ancillary services

Rhode Island

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009

South Dakota

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009
- South Dakota requires additional data not required to fully complete the Streamlined Sales Tax Exemption Certificate (*e.g.*, requires description of the property, digital good or service purchased)

Tennessee

- Per Section 705(B) of the Agreement, Tennessee forfeited its membership to the Agreement

Utah

{Not required to recertify}

Vermont

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009
- Not a compliance issue, the BAC would like to have the Streamlined Sales Tax Exemption Certificate posted on North Dakota's website

Washington

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009
- BAC has some concerns with Washington's acceptance of exemption certificates that is being reviewed/addressed by Washington
- Exemption for pay-per-views programs purchased from certain providers may violate the Agreement

Wisconsin

- Potential issue with video games being defined in the digital product definition

West Virginia

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009

- Current Certificate of Compliance is not posted on West Virginia's website

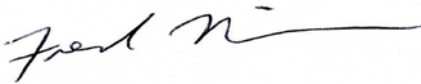
Wyoming

- BAC agrees with the compliance issues in the preliminary report submitted to CRIC on September 24, 2009
- Current Certificate of Compliance not found on website

Closing

The BAC appreciates the opportunity to provide comments on the states' compliance with the Agreement. Substantial compliance with all provisions of the Agreement is vital if this endeavor is going to be able to move forward with federal legislation to require sellers to collect the member states' state and local sales and use taxes. Please feel free to contact me if you have any questions.

Sincerely,



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