

To: Jerry Johnson, President
Streamlined Sales Tax Governing Board

From: Myles Vosberg, Chairman
Compliance Review and Interpretations Committee

Subject: 2010 Compliance Review

Pursuant to Rule 905 of the Streamlined Sales and Use Tax Governing Board rules, the Compliance Review and Interpretations Committee (CRIC) completed its annual recertification review of member states. CRIC with assistance from Governing Board staff reviewed member states' compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) following each state's submission of an updated certificate of compliance and taxability matrix.

Governing Board staff made an initial review of the certificates of compliance and identified issues of possible noncompliance with the Agreement. The states and the public had a 30 day period to respond to the staff's issues and to raise additional issues of possible noncompliance. All written comments submitted are posted to Governing Board's website. States were given an additional 10 days to respond to any issues raised by the public.

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

Five issues were carried over from the 2009 review. None were resolved by the August 1, 2010 recertification date and were not considered during the 2010 review. These issues include:

1. Does an exemption for regulatory fees, surcharges and taxes imposed on the seller conflict with the Agreement's definition of "sales price"? This issue was referred to the State and Local Advisory Council (SLAC) by the Governing Board in September, 2009 and work is ongoing.

2. Does an exemption for one-way paging conflict with the Agreement's definition of "paging"? This issue was referred to SLAC by the Governing Board in September, 2009. The Governing Board issued its interpretation in August, 2011. This issue was not considered in this year's review as it was not resolved until after the August 1 recertification point of analysis. CRIC discussed whether the Governing Board's adopted interpretation concerning one-way paging impacted the 2010 annual compliance review. Ultimately, CRIC did not consider the interpretation because it was adopted after the August 1 recertification point of analysis. A representative of the Business Advisory Council questioned this approach. During the review process a CRIC member also

commented that such interpretations are not to be considered for compliance review that an express statement of that policy by the Governing Board would provide certainty for the Governing Board staff, CRIC members, and the business community as to the process that will be followed in such instances in the future. Similar situations are likely to arise again and having a clear policy would avoid controversy or question in this area.

3. 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.

4. If a state has an exemption certificate that requests information not included in the Streamline exemption certificate may that state not provide liability relief if a seller only collects the information required on the Streamline exemption certificate? This issue should be assigned to SLAC or the Executive Committee to seek a final resolution.

5. Is a state required to have in law the liability relief required in Section 304, or is it only necessary that a state provide the liability relief if they change their tax rate without providing at least 30 days notice as required in Section 304? This provision is in effect, but no state can be sanctioned until January 1, 2011 as provided in Section 809. Several states have not enacted this into law. This issue should be assigned to SLAC or the Executive Committee to seek a final resolution.

A new issue was added during the review of Oklahoma. The committee felt that the Agreement needs to be clarified with respect to the option to use the mobile phone number when sourcing prepaid wireless calling service. 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 remainder of this report is a summary of the action taken for each member state. The following summary includes the issues of possible non-compliance that were raised and if CRIC voted to recommend that the Governing Board find a state out-of-compliance.

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 and the members of the public that provided input.

State Action:

Arkansas

Finding: CRIC recommends that Arkansas be found out-of-compliance with the Agreement regarding issue 2. Issue 1 was not considered and issue 3 was resolved.

Vote: 4-0; Peters, Cram, Vosberg, and Jennrich (Atchley abstained)

Issues Raised:

1. There is no provision for relief for liability if a state rate change takes effect in less than 30 days.
2. The rule providing for use of a blanket exemption certificate only applies to resellers.
3. The definition of “sales price” does not contain the provisions related to consideration received from third parties which is in the Agreement definition.

Arkansas Response:

Arkansas indicated that with respect to issue 2, the state does allow blanket certificates for other exempt transactions, but agreed the rule only addresses resale transactions and appears to be inconsistent with their policy. A revision to the rule will be promulgated. With respect to issue 3, the citation for the rule containing the third party language was left off of the certificate of compliance, which was updated accordingly.

Indiana

Finding: CRIC recommends that Indiana be found out-of-compliance with the Agreement regarding issues 1, 2, and 6. Issues 3, 4, and 5 were resolved.

Vote: 6-0; Atchley, Peters, Vosberg, Jennrich, Cram and Mastin

Issues Raised:

1. The statutes providing relief for sellers and CSPs from liability for errors in the taxability matrix or rate information do not provide the relief for all sellers, just sellers using a CAS.
2. The statute taxing prepaid calling arrangements uses the terms prepaid telephone calling cards and prepaid telephone authorization numbers. These terms are not defined in the Agreement. Also, the taxability matrix indicates that interstate and intrastate prepaid calling service and prepaid wireless calling service are taxable but lists international prepaid services as exempt. The taxing statute mentioned above does not indicate such a jurisdictional restriction.
3. The statute cited for customer refund procedures only addresses requests for refunds from the department. The statute does not address the provisions relating to cause of action against the seller or the presumption of a reasonable business practice.
4. The statutes cited for exemption certificates make no reference to electronically captured data and it is unclear whether a seller is held harmless if they electronically capture the data elements for claiming exemption.
5. Indiana’s Information Bulletin #57, referenced for drop shipment transactions, contains requirements that exceed those in the SSUTA. It should not require a: 1) description of the articles purchased or 2) statement indicating that the articles purchased are to be resold and that the purchaser is not required to register as an Indiana retail merchant.
6. The statute exempting medical equipment distinguishes between a “sale” (subpart (a)) and a “rental” (subpart (b)) of certain medical equipment. Sales and rentals should be treated the same. Additionally, as compared to the sale of medical equipment, the rental provision is more limited in scope.

Indiana Response:

Legislation to address these issues will be introduced in the 2011 legislative session. The state indicated that a purchaser has to exhaust their administrative remedies for refunds and they have to apply to the department for the refund (issue 3). Indiana said they administer the exemption requirements for electronically captured data elements in accordance with the Agreement (issue 4). The state drafted and circulated a bulletin clarifying the state's position on drop shipments and the state indicated that the additional information fields are optional (issue 5).

Iowa

Finding: CRIC recommends that Iowa not be found out-of- compliance with the Agreement. Issues 1 and 3 were not considered and issue 2 was resolved.

Vote: 4-1; Atchley, Peters, Vosberg, and Cram; No: Jennrich

Issues Raised:

1. There is no provision for relief for liability if a state rate change takes effect in less than 30 days.
2. It appears that the base for the local tax is slightly different from the state base. Sales of tangible personal property by the Department of Transportation are excluded from the local base, but a similar exclusion or exemption was not found for the state base.
3. Rule 701-18.20(7)(d)(3) includes one-way paging as a non-taxable service.

Iowa Response:

Iowa provided the statutory cite for the exemption at the state level for issue 2.

Kansas

Finding: CRIC recommends that Kansas not be found out-of- compliance with the Agreement. The only issue was resolved.

Vote: 4-0; Atchley, Vosberg, Peters and Jennrich (Cram abstained)

Issue Raised:

The statute authorizes an additional 2% state tax in special redevelopment districts.

Kansas Response:

The state clarified that the additional tax had never been imposed and the department will request legislation to repeal this provision.

Kentucky

Finding: CRIC recommends that Kentucky not be found out-of- compliance with the Agreement. Issues 1 and 3 were not considered and issues 2, 4, and 5 were resolved.

Vote: 6-0, Atchley, Vosberg; Peters, Cram, Mastin and Jennrich

Issues Raised:

1. There is no provision for relief from liability if a state has a rate change take effect in less than 30 days.
2. The statute cited for the relief from liability provided to sellers and CSPs for errors in the taxability matrix (s. 328 of the Agreement) is the one providing relief for reliance on previous certified software. There is no provision that provides the s. 328 relief.
3. The state exempts “rate increases” for the school tax and any other taxes and surcharges relating to telecommunications service. The school tax and many of the other charges are imposed on the provider of the service and the definition of sales price includes them. Sales price only excludes such charges if they are imposed directly on the consumer.
4. The state’s website has multiple exemption forms and the state has indicated that it will require a seller accepting a non-Agreement exemption certificate to be held to a higher standard than that allowed by a seller using the Agreement’s form.
5. A statute cited contains a provision requiring the exemption be available in the state; however, the provision is not limited to over-the-counter sales.

Kentucky Response:

The state clarified that a general statutory provision (issue number 2) allows the department to provide the relief for errors in the taxability matrix administratively. The state said that a state exemption form (issue number 4) with only the information required by the Agreement would be accepted. The state pointed out that the limitation to over-the-counter sales is in the first subparagraph of the statute cited (issue 5).

Michigan

Finding: CRIC recommends that Michigan be found out-of- compliance with the Agreement regarding issues 3 and 4. Issues 2 and 7 were not considered and issues 1, 5, 6, 8, 9, 10, and 11 were resolved.

Vote: 6-0; Atchley, Peters, Jennrich, Cram, Mastin, and Vosberg

Issues Raised:

1. The taxability matrix indicates that telecommunications nonrecurring charges are taxable, but the statute specifically excludes them.
2. There is no provision for relief from liability if a state has a rate change take effect in less than 30 days.
3. There is no provision in the statute cited for sourcing private communications service.
4. The statute sourcing mobile services uses the term “mobile wireless service” instead of “mobile telecommunications service” which is the term used in the Agreement. The definitions for the two terms are not the same as mobile telecommunications service has a wider application.
5. The bad debt statute provides that payments of amounts previously written off as uncollectible should be applied “proportionately first” to the sales price and

sales tax thereon and second to interest and other charges. The Agreement provides that such payments should be applied “first proportionately” to sales price and sales tax thereon and second to interest and other charges. The computations are not equal.

6. The “sales price” definition does not have a provision excluding non-third party discounts nor does it have the language for inclusion of third party discounts.
7. The statute for taxing interstate telecommunications service excludes one-way paging service. Paging service is defined in the Agreement and includes both one-way and two-way service.
8. Michigan’s administration of their sourcing statute does not appear to be compliant with the Agreement. Michigan is sourcing the sale of electronically downloaded (or remotely accessed) software at the billing location instead of the known location(s) where the product was received or from which it was accessed.
9. There is concern that Michigan is taxing remotely accessed software through its imposition on TPP. The Agreement only permits taxation of software under an imposition on TPP when it is delivered to the customer.
10. A statute regarding the Multistate Tax Commission requires good faith acceptance of exemption certificates.
11. There are also provisions discussing “drop shipment” sales, which appear to require periodic report information not required in the Agreement.

Michigan Response:

The state explained that telecommunications non-recurring charges were not excluded from their “sales price” definition, but were exempted elsewhere in their statute and that the taxability matrix is correct (issue 1). The state said they were not aware of the separate private communications sourcing provisions in the Agreement (issue 3). The state didn’t know if their use of “mobile wireless service” in the sourcing statute effected the sourcing of any services on a mobile service bill (issue 4). The state did not think their provision on bad debt had a different effect than the Agreement provision and said it was a question of semantics (issue 5). The state provided the rule cite for the third party provisions (issue 6). The state explained that their sourcing of downloaded and remote software was in accordance with the Agreement (issues 8 and 9). The state said the “good faith” provision (issue 10) was in the MTC part of the statute and the Agreement exemption provisions have all been adopted in the statute and take precedence. The state stated that they are not enforcing the annual report requirement (issue 11) and are aware on no seller penalty related to compliance, but in their opinion if they did require the information it would be in accordance with the Agreement.

Minnesota

Finding: CRIC recommends that Minnesota be found out-of-compliance with the Agreement regarding issue 1 and s. 329 of issue 5. Issues 2, 3, 4 and the remainder of 5 were resolved.

Vote: 5-1; Yes: Atchley, Peters, Jennrich, Cram and Vosberg; No: Mastin

Issues Raised:

1. The taxability matrix indicates that digital audio works are not taxable in general but that ringtones are. Digital audio works is a product definition that includes ringtones. This issue was identified in the 2009 review process and has not been resolved.
2. The bad debt provision in the Agreement provides that when the amount of bad debt written off is greater than the taxable sales for the period, a refund claim may be filed. The state instead allows the excess to be used on the return in the subsequent month.
3. The rounding rule in the statute cited does not require computation to the third decimal place.
4. The definition of “sales price” does not include the receipt of consideration from third parties provisions.
5. For a number of items, the state uses administrative practice for the legal authority. These include the s. 317 provision for drop shipments, the s. 324 allowing sellers to round at the item or invoice level, the s. 329 effective date provisions for services covering periods before and after the effective date of the change, and the s.401 provision that the state will not use registration under the central system in determining whether a seller has nexus.

Minnesota Response:

The state indicated that a refund was automatically granted for bad debts (issue 2) and that instructions for the return are currently being revised and will include that information. The state provided the revenue notice which includes the rounding provisions (issue 3 and s. 324 in issue 5). The state provided the statute cite for the sales price third party provisions (issue 4). The state provided a Fact Sheet available on their website showing the treatment of drop shipments (issue 5, s. 317). The state indicated that the department had general authority under the statutes with respect to the nexus issue (issue 5, s. 401). The state agreed that they were out-of-compliance with respect to ringtones (issue 1).

Nebraska

Finding: CRIC recommends that Nebraska not be found out-of- compliance with the Agreement. Issue 2 was resolved and CRIC voted that issue 1 was not a compliance issue.

Vote: 4-2; Yes: Atchley, Mastin, Vosberg, and Cram; No: Peters and Jennrich

Issues Raised:

1. By regulation, mailing lists delivered electronically are taxed as tangible personal property.
2. Regulation (1-013.03) seems to require more information on an exemption certificate than allowed under the Agreement.

Nebraska Response:

The state said they do not require the additional information on the state exemption certificates and would accept certificates without it (issue 2). The department indicated that the regulation to clarify this treatment has been promulgated and the Governor will sign it. With respect to issue 1, the state indicated that the state Supreme Court had ruled that electronic mailing lists are tangible personal property. The information in Nebraska's certificate of compliance indicates the state taxes electronic mailing lists as tangible personal property per the Supreme Court case and continues to be for informational disclosure purposes only and does not alter Nebraska's compliance with the Agreement. The regulation taxing these lists imposes tax on mailing lists regardless of how they are delivered and does not state they are taxable as tangible personal property.

Nevada

Finding: CRIC recommends that Nevada be found out-of-compliance with the Agreement regarding issues 3, 5, 6 and 7. Issue 1 was not considered and the entity that raised issue 9 did not participate in the hearing.

Vote: 5-0; Vosberg, Peters, Atchley, Jennrich, and Cram

Issues Raised:

1. The definition of sales price excludes certain federal excise taxes whether imposed on the seller or purchaser. This issue was referred to SLAC as a result of the 2009 review process and is still under review.
2. The definition of sales price includes certain delivery charges and installation in "services necessary to complete the sale." The Agreement definition specifically excludes them from this category.
3. The definition of "receipt" in the statute is that receipt is taking possession or making first use of tangible personal property. In the Agreement it is taking possession of tangible personal property, making first use of services, or taking possession of or making first use of digital goods.
4. The statute states that collection of amounts previously claimed as a bad debt are to be applied first to the taxable price of property or services and to sales tax, and secondly to other charges such as interest. The Agreement states that the amount should be applied proportionately to the sales price and tax.
5. The provision for drop shipments requires that the resale certificate be taken in good faith. The Agreement does not include a good faith requirement.
6. The statute exempts certain "medical devices," which according to the taxability matrix includes mobility enhancing equipment and durable medical equipment. "Medical devices" is not a term in the Agreement and the statute and administrative code do not define it.
7. The state has been declared out of compliance by the Governing Board because it has not fully implemented ACH credit payments. The state is in the process of completing the full implementation of ACH credit.
8. The Agreement exemption certificate (or equivalent) was not found on tax agency's website.

9. The Judicial branch of the state of Nevada does not feel that the state of Nevada has the right to enter into the Streamlined Sales Tax Act until by voter referendum Chapter 372 is repealed. This has not happened and until that does, no matter what the Nevada taxing authority leaders do or say or agree to even in writing cannot and will not be honored by the Judicial branch of the state of Nevada. The sales tax matrix will never be honored as the attorney generals' office feels it is not allowed under law. As such the state of Nevada can never be in compliance with the Streamlined Sales tax Act until that takes place.

Nevada Response:

Nevada indicated that the state administers the definition of "sales price" (issue 2) and the bad debt provision (issue 4) in accordance with the Agreement and this is merely semantics. The state said the Agreement exemption certificate was put on the website (issue 8).

New Jersey

Finding: CRIC recommends that New Jersey be found out-of- compliance with the Agreement regarding issue 1. Issue 2 was not considered.

Vote: 5-1; Yes: Atchley, Peters, Cram, Vosberg, and Jennrich; No: Mastin

Issues Raised:

1. The statute taxes "digital products" which it defines as "electronically delivered music, ringtones, movies, books, audio and video works and similar products, where the customer is granted a right or license to use, retain or make a copy of such item." The statute does not specifically address whether it taxes sales for less than permanent use or based on continued payment. Legislation has been introduced to tax specified digital products instead of "digital products" and to specify the taxability of sales for less than permanent use or based on continued payment.
2. There is no provision for relief from liability if a state has a rate change take effect in less than 30 days. The proposed legislation also addresses this issue.
3. The taxability matrix shows computer software maintenance contracts that only provide support services as 100% taxable. The rule and technical bulletin indicate they are not taxable.
4. The rules for acceptance of exemption certificates require "good faith."
5. There is no statute that includes the terms "exemption certificates" or "good faith." However, there are several regulations, bulletins, and publications on this topic. These all require that the exemption certificates be accepted in good faith. However, it is noted that Regulation 18:24B (incorporated in Chapter 24B, the "Streamlined Sales and Use Tax Rules and Procedures") is valid from August 3, 2009 through August 3, 2014. It is unclear whether Chapter 24B supersedes Chapter 24. Further, as there is no statute referenced, it is unclear whether the various regulations promulgated under Chapter 24 are still valid.
6. Regulation 18:24B-1.2(c) states that the relief provided to sellers who obtain a fully completed certificate or relevant data elements within 90 days subsequent to

the sale is only available for sales made after January 1, 2008 even though New Jersey became a full member 10/1/2005.

New Jersey Response:

The state agreed that issue 1 was a compliance issue and has drafted legislation. The state corrected the taxability matrix (issue 3). The state said a newer regulation provides the exemption relief provisions and supersedes old regulations requiring good faith and the old regulations will be repealed (issues 4 and 5). The state said the effective date of the exemption regulation (issue 6) is the same as the effective date of the Agreement provision.

North Carolina

Finding: CRIC recommends that North Carolina be found out-of-compliance with the Agreement regarding issues 6 and 11. Issue 1 was not considered and issues 2, 3, 4, 5, 7, 8, 9, 10, 12, and 13 were resolved.

Vote: 5-0; Vosberg, Peters, Atchley, Jennrich and Cram

Issues Raised:

1. No 30 day rule for rate changes, but did comment that provided relief in this situation in 2009.
2. There appear to be a number of differences in the state and local tax bases. Electricity and certain digital products are subject to state tax but not local tax. Two of the local sales taxes exempt bundled transactions which are taxed at the state level and under other local taxes.
3. The statute defines prepaid telephone calling service to include prepaid wireline calling service and prepaid wireless calling service. There is no definition for prepaid calling service (which includes both wireline and wireless service) and prepaid wireline calling service is not a defined term. This was noted in last year's review and legislation was requested, but did not pass. There is not an effect under today's offerings by the industry.
4. The definition of "postpaid calling service" does not exclude prepaid wireless calling service.
5. The sourcing statute puts the option of using the mobile phone number with the fourth step (address of the payment instrument) instead of the fifth (ship from, service performed).
6. The definition of "receive" and "receipt" does not have the words "or taking possession or making first use of digital goods". Several types of digital goods are taxed in the state.
7. The sourcing for mobile telecommunications service excludes prepaid wireless calling service. The Agreement excludes prepaid calling service (which is mainly wireline) and prepaid wireless calling service.
8. The sourcing for private communications does not follow the SSUTA with respect to segments that are not billed separately.
9. The definition of "service address" is not complete. It includes the first step but not the second (origination of the signal) or third (place of primary use).

10. The bad debt technical bulletin allocates amounts collected that were previously reported as bad debt proportionately first to sales price and secondly to interest and other charges. It should be proportionately to sales price “and sales tax thereon.”
11. The effective date language in the statute for services covering periods before and after the statutory effective date contains the sentence: “For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.” The Agreement provides that the change is effective on the first billing period on or after the statutory effective date. The first billing period could be any day of the month.
12. The technical bulletin on bundled transactions provides that transactions with “10% or more” taxable property are taxable. This should be “more than 10%.”
13. The statute cited for providing relief from liability from errors in the taxability matrix for sellers and CSPs (s. 328) and purchasers (s. 331) only relates to errors in information on rates, boundaries and taxing jurisdiction assignments. There is no provision for errors in the taxability matrix.

North Carolina Response:

The state said the department has authority to reconcile differences in the state and local tax bases and the bases are the same (issue 2). The state said prepaid services are sourced in accordance with the Agreement and the use of the word “wireline” does not have an effect on the taxation of the prepaid calling services (issues 3, 4 and 7). The state did not think the inclusion of the mobile phone number in step 4 instead of step 5 of the sourcing provisions effected the ultimate sourcing of prepaid wireless calling service (issue 5). The state also indicated that their sourcing of private communications service reaches the same result as the Agreement (issue 8). The state issued revised technical bulletins making the corrections needed in issues 9, 10, and 12. The state corrected the certificate of compliance for issue 13.

North Dakota

Finding: CRIC recommends that North Dakota be found out-of- compliance with the Agreement regarding issue 2. Issue 1 was not considered.

Vote: 5-0; Atchley, Mastin, Peters, Jennrich and Cram (Vosberg abstained)

Issues Raised:

1. The state taxes communication service which is defined to include telecommunications service. Under the statute one-way communication services are not taxable. Paging services are a defined product under telecommunications service and there are one-way and two-way paging services. This was an issue from the 2009 review that was referred to the Governing Board. The Governing Board ruled in their August 2010 meeting that they would have to be all taxable or all exempt.
2. The definition for “fixed wireless service” is incorrect. It is defined using the definition for “mobile wireless service.”

North Dakota Response:

The state agreed that they are out-of-compliance with respect to issue 2.

Ohio

Finding: CRIC recommends that Ohio be found out-of-compliance with the Agreement regarding issues 5 and 6. Issues 1, 2, 3, 4, and 7 were resolved.

Vote: 5-1: Yes: Vosberg, Jennrich, Peters, Atchley, Cram; No: Mastin

Issues Raised:

1. A number of provisions in the Agreement are in pending rules that the state's website indicates were to be presented on August 31, 2010. These are: 1) relief from liability provisions for rate changes taking effect in less than 30 days (s. 304); 2) sourcing for Internet access and ancillary services (s. 314); 3) relief from liability for purchasers (s. 331); 4) sellers and CSPs relief and 10 day rule (s. 502); and 5) definitions and taxability of computer software maintenance contracts (an information release issued September, 2010 does provide the information) (s.330 and definitions).
2. The statute exempts durable medical equipment for home use in one section and exempts hospital beds sold to hospitals and other medical facilities in another section. Hospital beds are durable medical equipment and the exemption should be for all durable medical equipment to such facilities.
3. The taxability matrix indicates that international, interstate and intrastate 900 services are taxable. The statute exempts 900 services.
4. The statutes for sourcing and the definition of "receive" and "receipt" do not contain the provisions relating to digital goods. The state taxes electronic information services and electronic publishing services.
5. The pending rule that provides for sourcing Internet access and ancillary service strikes all of the language in the current rule. The current rule contains the definitions of "communications channel" and "customer channel termination point" that are needed for sourcing private communications service.
6. The provision for bad debt (provided in a rule) provided that amounts collected that were previously written off be applied first to sales price and tax thereon. The word "proportionately" is left out.
7. Section 321 of the certificate of compliance is blank. Statutes covering confidentiality were found in the statutes.

Ohio Response:

The state said the rules have been filed and become effective November 29, 2010 (issue 1). The state said the hospital bed exemption (issue 2) is an entity exemption and meets s. 316 C 3. The state corrected the taxability matrix (issue 3). The state said it doesn't need receive/receipt language for digital goods as they are not taxed and electronic information services are taxed as services (issue 4). The state said it will need to amend rules on Internet sourcing and bad debts (issues 5 and 6) as they do not administer these sections in conformance with the Agreement. The state said it will correct the certificate of compliance to add the needed cites for confidentiality (issue 7).

Oklahoma

Finding: CRIC recommends that Oklahoma not be found out-of-compliance with the Agreement. Issues 1 and 5 were not considered because the Governing Board has not yet resolved the issues. Issue 3 was not considered because the committee felt there was some ambiguity in the Agreement's wording.

Vote: 5-0; Atchley, Vosberg, Cram, Jennrich and Peters (Mastin abstained)

Issues Raised:

1. There is no provision for relief from liability if a state has a rate change take effect in less than 30 days.
2. The taxability matrix shows dental prosthesis with a prescription as taxable. The definition in the statute excludes eyeglasses, contact lenses and hearing aids, but not dental prosthesis.
3. The sourcing statutes require that prepaid wireless calling service be sourced to the location associated with the mobile telephone number under paragraph 5. The use of the mobile telephone number is optional in the Agreement.
4. The rules for exemption administration require "good faith." Good faith requires that the seller strictly comply with the statutory requirements. Does this mean obtaining the required information, within 90 days of the sale, and the seller doesn't fraudulently fail to collect the tax, etc.?
5. The rule for telecommunications services excludes from taxation "Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund." This is an issue from the 2009 that the Governing Board has referred to SLAC.
6. Oklahoma Statute §1361.1 requires acceptance of a certificate in good faith for the vendor to be relieved of liability, which conflicts with other Oklahoma statutes.

Oklahoma Response:

The state corrected the tax matrix (issue 2). The state said it had interpreted the sourcing provision allowing the mobile phone number as an option for sourcing prepaid wireless calling service was meant to be an option for the state to choose, not the seller (issue 3). The state said the exemption provisions in the statute do not require "good faith" and conform to the Agreement (issues 4 and 6).

Rhode Island

Finding: CRIC recommends that Rhode Island not be found out-of-compliance with the Agreement. Issues 1 and 2 were resolved and issue 3 was not considered because the Governing Board has not yet resolved the issue.

Vote: 4-0; Vosberg, Cram, Atchley, and Jennrich

Issues Raised:

1. The taxability matrix indicates that international, interstate and intrastate 900 services are exempt. These are telecommunications services and all telecommunications services appear to be taxable in the state. No exemption for 900 service was found in the statute. This is not a charge for the information or other service provided by the customer of the telecommunications provider.
2. The statutes cited under s. 331 for purchasers' relief from liability only apply to sellers and CSPs.
3. The statute cited for relief from liability if a change goes into effect in less than 30 days do not contain that provision. It does contain the other s. 304 provisions.

Rhode Island response:

The state corrected the taxability matrix and certificate of compliance (issues 1 and 2).

South Dakota

Finding: CRIC recommends that South Dakota not be found out-of- compliance with the Agreement. The one issue was resolved.

Vote: 4-0; Atchley, Vosberg, Jennrich and Cram (Peters abstained)

Issues Raised:

There is no provision to require amounts collected that previously were reported as bad debt be allocated first proportionately to taxable price and sale tax thereon and then to other charges.

South Dakota response:

The state corrected the certificate of compliance to provide the citation for the issue.

Tennessee

Finding: CRIC recommends that Tennessee be found out-of- compliance with the Agreement regarding issues 2, 3 and 7. Issue 1 was not considered.

Vote: 6-0; Vosberg, Atchley, Cram, Peters, Jennrich and Mastin

Issues Raised:

1. There is no provision for relief for liability if a state rate change takes effect in less than 30 days. The state administratively has provided some relief in the past.
2. The definition of "sales price" includes bundling language. Bundling language was specifically taken out of the Agreement definition.
3. No provision allowing 90 days after the sale to obtain an exemption certificate or for 120 after request by the state to prove the exemption is valid.
4. The statute cited for purchasers' relief from liability for errors in the taxability matrix is the one for sellers and CSPs and provides such relief for dealers. It does not appear to include purchasers.
5. The state has indicated that written policy will be provided for the effective date requirements in s. 329 of the Agreement. Has this been done?

6. Tennessee does not comply with either section 310 or section 310.1 of the SSUTA until July, 2011.
7. The state noted in their recertification letter that there were a number of provisions in the Agreement that do not become effective until July 1, 2011.
 - Section 302: the state and local tax base is not the same for tangible personal property, video programming services, interstate telecommunications sold to business, energy fuels and aviation fuel.
 - Section 305 C: effective date of local rate and boundary changes.
 - Section 308: a different rate on video programming services, interstate telecommunications, intrastate telecommunications, manufacturer's energy fuels and water, aviation fuel, tangible personal property sold to common carriers for export, specified digital products, and an additional state tax on single articles of tangible personal property.
 - Section 310, 311, and 313: sourcing
 - Section 314: have not adopted sourcing of prepaid calling services.
 - Section 317: have not adopted the drop shipment rule.
 - Section 318: have not adopted one return per entity.
 - Section 323: caps on video programming services, an additional state tax on single articles of tangible personal property priced between \$1600 and \$3200, and a single article limitation on tangible personal property priced in excess of \$1600.
 - Section 330A: have not adopted the bundled transaction rules.

Tennessee Response:

The state said the laws to accomplish most of the issues were scheduled to take effect on July 1, 2011. The state indicated that more than 90 and 120 days were allowed to obtain exemption certificates or other information but that that position was not in writing (issue 3). The state said the relief provisions applied to dealers and that "dealer" is defined to include purchasers (issue 4). The state said it publishes the effective date provisions for services with notices about upcoming rate and base changes (issue 5).

Utah

Finding: CRIC recommends that Utah not be found out-of-compliance. All of the issues were resolved.

Vote: 4-2; Yes: Vosberg, Atchley, Cram and Mastin; No: Jennrich, Peters

Issues Raised:

1. The taxability matrix indicates that oxygen delivery equipment with a prescription is exempt. The statute cited is an exemption for drugs, syringes and stoma supplies. The durable medical equipment exemption restricts it to "for home use."
2. The state taxes utilities at a special rate. The local taxes are not imposed on utilities. The Agreement allows a difference in the tax base only with respect to motor vehicles, aircraft, watercraft, modular homes, etc.

3. The definition for “conference bridging” says that a telephone number is provided. The Agreement definition says that a telephone number may be provided.
4. The state sources interstate sales of electronically downloaded (or remotely accessed) software at the server location instead of the customer’s location or billing address.
5. The state has private letter rulings indicating computer software is included within the definition of “products transferred electrically” when s. 333 states computer software “shall be excluded from the term “products transferred electronically.” Further, the Agreement definition of TPP specifically includes “prewritten computer software” and Utah has excluded prewritten computer software from its definition of TPP if the software is transferred electronically.

Utah Response:

The state corrected their taxability matrix for oxygen delivery (issue 1). The state said that the taxation of utilities is a rate issue and conforms to section 308 (issue 2). The state said that even the definition of “conference bridging” says that it include a telephone number and the Agreement states it may include a telephone number, the state administers the provision in conformance with the Agreement (issue 3) and will be clarified in future legislation. The state indicated in a written response that “regardless of the fact the sales tax treatment of prewritten computer software remains the same whether the prewritten software is taxes as tangible personal property or a product transferred electronically, we agree ... the current Utah statutes are contrary to the language of section 333 of the Agreement.” However, the state said the taxation of software transferred electronically is administered in conformance with the Agreement and the private letter rulings that conflict with the Agreement are being withdrawn (posting on the website). The state indicated several issues will be clarified in future legislation (issues 4 and 5).

Vermont

Finding: CRIC recommends that Vermont not be found out-of-compliance. All the issues were resolved.

Vote: 6-0, Peters, Atchley, Cram, Vosberg, Jennrich, and Mastin

Issues Raised:

1. The following appear to be errors in the taxability matrix: 1) Direct mail delivery charges are marked as taxable. The statute appears to exempt them. This was an issue last year and the state changed the matrix to show them as exempt. 2) Taxable/exempt boxes in the sales tax holiday section are marked with “x” for clothing, computers and prewritten software. The state does not have a sales tax holiday. 3) Optional software maintenance contracts for prewritten software that only provide support services are marked 100% taxable. The regulation indicates that they are exempt.
2. Although some of the relief from liability provisions found in the Agreement are in the regulations, the following are not: 1) provision for relief for liability if a

- state rate change takes effect in less than 30 days (s.304); 2) purchaser relief from liability (s. 331); 3)relief from liability when relying on the certification of software (s. 502).
3. Specified digital products are now taxable, but the sourcing provisions do not address them in A.5 of the general sourcing rules (s. 310) or in the definition of “receive” or “receipt” (s. 311). Also, in s. 328 of the certificate of compliance, it is marked “N/A” instead of “yes” for whether the taxability matrix has been marked for these items. The treatment of digital codes is marked “N/A” instead of “yes” in s. 332.

Vermont Response:

The state corrected the errors in the taxability matrix (issue 1). The state posted a policy statement regarding the relief from liability provisions (issue 2) on their website. The state said the regulations dealing with the sourcing of specified digital products became effective November 1, 2010 (issue 3) and they corrected their certificate of compliance.

Washington

Finding: CRIC recommends that Washington not be found out-of-compliance. All the issues were resolved.

Vote: 5-0, Peters, Atchley, Vosberg, Cram and Mastin (Jennrich abstained)

Issue Raised:

There was concern raised about the ability of an instate seller to use the Agreement exemption certificate in all circumstances.

Washington Response:

The state said it adopted all the s. 317 relief from liability provisions and a seller is relieved if they accept an Agreement exemption certificate.

West Virginia

Finding: CRIC recommends that West Virginia not be found out-of-compliance. All the issues were resolved.

Vote: 6-0, Peters, Atchley, Vosberg, Cram, Jennrich and Mastin

Issues Raised:

1. The state does not tax specified digital products, but has “yes” in the boxes for D1-4 and G.
2. The taxability matrix indicates that conference bridging service is taxable. No other ancillary service is taxable and the statutes do not appear to address it.

West Virginia Response:

The state corrected the certificate of compliance for digital products (issue 1). The state said the confusion about conference bridging service is related to what services are

regulated by the Public Service Commission. The state said ancillary services are generally regulated, but conference bridging services are not.

Wisconsin

Finding: CRIC recommends that Wisconsin not be found out-of-compliance. All the issues were resolved.

Vote: 6-0, Atchley, Peters, Cram, Jennrich, Vosberg, and Mastin

Issue Raised:

Regulation 11.14(8) regarding a farmer's exemption requires the exemption form to be signed. It is unclear whether Regulation 11.14(13) overrides this requirement.

Wisconsin response:

The state said the statute allowing electronically filed exemption certificates trumps the rule and they will amend the rule.

Wyoming

Finding: CRIC recommends that Wyoming be found out-of-compliance with the Agreement regarding issues 1 and 2. The non-compliance item related to s. 331 in issue 2 relates to relief of liability for only interest and penalty. Issues 3, 4, 5, and 6 were resolved and issue 7 was not considered.

Vote: 6-0, Peters, Atchley, Cram, Vosberg, Jennrich, and Mastin

Issues Raised:

1. Although some of the relief from liability provisions found in the Agreement are in the regulations, the following are not: 1) exemption administration 90 day and 120 day rules (s. 317); 2) relief from liability for relying on erroneous information in the taxability matrix for sellers and CSPs (rule cited is for rates, boundaries and jurisdiction information errors) (s. 328); 3) purchaser relief from liability (s. 331); 4) relief from liability when relying on the certification of software (s. 502). Also, the statute for customer refund procedures providing for when a cause of action accrues does not contain the presumption of reasonable business practice provision. The citation column for these items indicates administrative practice.
2. The state does not appear to be following the requirements for effective dates for rate changes with respect to services covering periods starting before and ending after the statutory effective date. The comment states "Vendor must charge rate in effect when service was provided, not rate in effect when bill was presented. If the service provider engages in periodic billings this would trigger separate remittance points. Each payment would be taxed at the rate in effect when the periodic payment is due."
3. The statute imposing tax on specified digital products does not specify treatment of sales of digital codes. The citation column indicates administrative practice.

4. The response to s. 333 indicates that products delivered electronically are included in the definition of tangible personal property which is prohibited by the Agreement effective 1/1/2010. What products are included?
5. The taxability matrix indicates that bottled water is taxable and that prepared food is not taxable. The definition of “food” in the rule does not exclude bottled water and does exclude prepared food.
6. The state taxes intrastate telecommunications service. The taxability matrix indicates that interstate and international prepaid calling service and prepaid wireless calling service are taxable. The rule cited says that “pre-paid calling cards, telephone debit cards...shall be considered tangible...personal property. The Agreement considers these to be telecommunications service.
7. The taxability matrix shows intrastate paging as not taxable and has a comment that paging is not included in the definition of taxable communication service. The statute taxes intrastate telecommunications service and paging is included in the definition of telecommunications service in the Agreement. This was an issue from the 2009 review that was referred to the Governing Board. The Governing Board ruled in their August 2010 meeting that they would have to be all taxable or all exempt.
8. There are certain instances where the burden of proving the exemption exceeds the minimum requirements allowed under the Agreement. Examples include: 1) §9(f)(i) requires DOT#, permit and insurance, 2) §15(b) requires an affidavit that specifically identifies addresses outside of WY, and 3) §15(x)(vi) requires a seller receive the proper information required from the holder of a direct pay permit.

Wyoming response:

The state said their practice is to allow longer than the 90/120 days (issue 1). The state said their constitution prohibits waiving tax, but the state can provide relief for penalty and interest (issue 1). The state agreed to promulgate rules to conform to the Agreement provisions noted in issue 1. The state also agreed a rule was needed to conform to the provisions of section 329 (issue 2). The state said it treats digital codes the same as digital products and administers this provision in accordance with the Agreement (issue 3). The state said it would correct the certificate of compliance for section 333 (issue 4). The state said the taxability matrix was corrected for issue 5. The state said it taxes prepaid calling service the same as telecommunications service (issue 6). The state indicated that exemptions are administered in accordance with the Agreement and that the requirement for the DOT #, permit and insurance must be provided by the purchaser, not the seller, when the purchaser pays the tax directly to the local government (issue 8).