

BAC's General Principles Regarding Sanctions

The BAC's goal of reviewing a member state's compliance with the Agreement and, if applicable, requesting the imposition of sanctions, furthers the integrity of the Agreement and encourages each member state with a compliance issue to cure its compliance issue(s) in a timely manner.

The BAC uses a sanctions hierarchy based both on the severity of the compliance issue and the amount of time elapsed since the state was found out of compliance. One factor the BAC considers when assigning a sanction level to a state is the increase in administrative burden the state's noncompliance issue(s) has on retailers and purchasers. In addition to the administrative burden, the BAC considers the potential financial compliance burden that the noncompliance issue presents either directly or on audit. Another factor the BAC considers in assigning a hierarchy level to a state's noncompliance is whether the noncompliance issue is preexisting (e.g., inadvertent, discovered in an annual review of the state's compliance) as opposed to a change in the state's law (either legislative or regulatory) occurring after a state became a member of the Agreement bringing the state out of compliance.

The Governing Board, similarly, should use a hierarchy in determining which sanction to impose with respect to a state's non-compliance, with more severe non-compliance issues starting at a higher level and minor compliance issues starting at a lower level.

Higher level sanctions include suspension of a state's voting rights, reversion to "Associate Member" status, and, for the most serious and longstanding noncompliance, expulsion from the Governing Board.

BAC's Suggested Sanction Levels

Level 1: For noncompliance issues that are considered minor, unintentional and newly identified, the sanction would be to require the state to cure the noncompliance within two years with public notice, both on the state revenue agency's website and the Governing Board's website, that the state is out of compliance together with a detailed explanation of how the state's law differs from the requirement(s) of specific provisions of the Agreement (including rules promulgated thereunder);

Level 2: Continuation of a Level 1 noncompliance beyond two years would move the state to Level 2. In addition, a state that adopted a conflicting law, regulation, or policy change after becoming a member of the Agreement is assigned to Level 2. A state at Level 2 would have one year to cure the compliance issue (or within a reasonable time if the member state's legislature only meets every two years and the change in the law was enacted by the legislature in its immediately preceding legislative term). A Level 2 state would lose its right to vote on other states' compliance with the Agreement (with the denominator reduced appropriately for purposes of determining a majority of the Governing Board);

Level 3: A state that failed to cure its compliance issue within the time provided by Level 2 would be assigned to Level 3. In addition, states with severe non-compliance issues would be assigned to Level 3. A state with a Level 3 noncompliance issue would have one year to return to full compliance (or a reasonable period if the member state's legislature only meets every two years and the change in the law was enacted by the legislature in its immediately preceding legislative term). As an additional sanction, the state would lose its right to vote on any issues that an Associate Member state is not authorized to vote upon (with the denominator appropriately reduced for the purpose of determining a majority of the governing board);

Level 4: A state that failed to cure its compliance issue within the time provided by Level 3 would progress to Level 4. In addition, Level 4 would include extreme non-compliance issues. A state at level 4 non-compliance must either agree to revert to associate member status until it comes back into compliance or voluntarily withdraw from the Agreement. If the state fails to agree to either, the Governing Board should initiate the expulsion process as provided for under the Agreement;

Level 5: A state with a Level 4 non-compliance issue that elected to revert to Associate Member status and that failed to cure within a reasonable amount of time or a state that intensified its non-compliance with the Agreement by increasing the number of compliance issues should result in the Governing Board initiating the expulsion process as provided for under the Agreement.

BAC's Recommended Sanctions for the Initial 2016 Sanctions Review

GA – SERs, good faith acceptance of exemption certificates, local tax – Level 3 sanctions – its issues have been pending for several years and the compliance issue was intentional

IN – SERs - Contingent based on it not fixing its issue by 7/1/2016 – Level 2 sanctions – its issue has been pending for several years

MI – Direct mail definitions and sourcing - Contingent based on it not fixing its issue by 7/1/2016 – Level 3 sanctions – its issues have been pending for several years

RI – Clothing Threshold does not comply with SSUTA - Level 3 sanctions – its issues have been pending for several years and the compliance issue was intentional

WI – Sourcing single payment leases - Contingent based on it not fixing its issue by 7/1/2016 – Level 1 sanctions – its issue was recently discovered in 2015