

To: Sen. Luke Kenley, President  
Streamlined Sales Tax Governing Board

From: Myles Vosberg, Chairman  
Compliance Review and Interpretations Committee

Subject: 2011 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 the 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.

Three issues were carried over from the 2010 review. None were resolved by the August 1, 2011 recertification date and were not considered during the 2011 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. This issue was not considered in this year's review as the Agreement requirements were amended at the Governing Board's May, 2011 meeting.

2. 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.

3. 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. This issue should be assigned to SLAC or the Executive Committee to seek a final resolution.

A new issue was added as a result of the Business Advisory Council's comments for the following states: IN, MI, UT & VT. Does the definition of tangible personal property and its inclusion of "prewritten computer software" which allows states to exclude prewritten software "delivered electronically" include a purchase of the mere access to prewritten computer software and computer hardware where the software and hardware at all times remain at the seller's business location and the purchaser never obtains physical possession of the software or hardware? CRIC voted on November 3, 2011 to defer this compliance issue to the Governing Board and did not address this issue for any state.

In addition, there are two related issues with regard to Utah. First, can the definition of tangible personal property include prewritten computer software "regardless of the manner in which the prewritten computer software is transferred?" Second, do the sourcing rules require sourcing under Sections 310.A.1-3 of the Agreement of sales of prewritten computer software where "a purchaser uses computer software and there is not a transfer of a copy of that software to the purchaser?" These issues are included in the issue the Committee defers to the Governing Board for resolution.

The following summary includes the issues of possible non-compliance that were raised for each member state and if CRIC voted to recommend that the Governing Board finds 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, the Business Advisory Council, and the members of the public that provided input.

### **State Action:**

#### **Arkansas**

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

Vote: 6-0; Peters, Cram, Vosberg, Johnson, Mastin and Jennrich (Atchley abstained)

Issues raised:

1. Not all local taxes have the effective date provisions for catalog sales and boundary changes.
2. The default provision for sourcing transactions does not contain the provision to source digital goods to the location they were first available for transmission by the seller. Digital audio visual works and digital audio works became taxable in July.

3. The definition of “receive” and “receipt” does not contain the provision for taking possession or making first use of digital goods.
4. The state does not tax digital codes the same as the digital product to which it relates.
5. The 50% rule in the Agreement applies to taxable items that are 50% or less than the purchase or sales price. The rule is stated in terms of nontaxable items and applies when the nontaxable portion is 50% or more.
6. Arkansas separately imposes a sales tax on certain installation services outside of its “sales price” definition. Installation charges are excluded from the state’s sales price definition.

Arkansas response:

Arkansas provided needed citations for issue 1. With respect to issues 2, 3 and 4, the state changed the taxability matrix and certificate of compliance to indicate that specified digital products are not taxable. Arkansas explained that the wording of the rule cited in issue 5 will be clarified and that the bundling rule is administered in conformance with the Agreement. With respect to issue 6, CRIC determined that a state could tax or exempt specific installation charges outside of the definition of “sales price.”

### **Georgia**

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

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

Issues raised:

1. The citation given in Section 602 applies to CSPs (Section 601) and does not mention Model 2 sellers.
2. The definition of “prepaid wireless calling service” uses the words “units of dollars” instead of “units or dollars.”

Georgia response:

The provision for monetary allowances for Model 2 sellers has been added to an emergency regulation (issue 1). The state indicated that a technical correction will be made in the prepaid wireless calling service definition next session (issue 2).

### **Indiana**

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

Vote: 6-0 on issues 1 and 5; Atchley, Peters, Vosberg, Jennrich, Johnson and Mastin and 5-0 on issue 4; Atchley, Vosberg, Jennrich, Johnson and Cram

Issues raised:

1. The exemption for free samples of prescription drugs includes prescription drugs, drugs containing insulin or an insulin analog, and blood glucose monitoring

- devices. Durable medical equipment is exempt only with a prescription. The blood glucose monitoring exemption does not require a prescription.
2. In Section 318, the statute cited in paragraph F does not address giving a minimum of 30 days' notice prior to establishing liability based solely on failure to file a return.
  3. No statutory authority could be found for the effective date rules for services covering a period of time (Section 329).
  4. The statute cited for the rounding rule (Section 324) does not address allowing sellers to elect to compute tax on an item or invoice basis.
  5. The state will not be able to accept the SER from Model 4 sellers until February, 2012.

**Indiana response:**

Indiana agreed that the exemption for blood glucose monitoring devices was allowed without a prescription, whereas the durable medical equipment exemption required a prescription (issue 1). The state indicated that it does provide 30 days' notice for failure to file and has posted a bulletin to its website explaining the procedure (issue 2). The state indicated that if Indiana increases its sales tax rate, (as last done on April 1, 2008) it also enacts code language to provide for the transition period, and for making the determination as to what services will be considered at the new rate. House Enrolled Act 1001-2008 section 845 provides the language for the transition of services provide (issue 3). The state provided a rule citation which does not address the computation on an invoice or item basis issue either. The statute requires the tax to be based on the gross retail income of the transaction (issue 4). The state self-reported their inability to accept the SER from Model 4 sellers (issue 5).

**Iowa**

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

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

**Issues raised:**

1. In Section 306, the statute cited provides that if an address-based database is provided, for assigning taxing jurisdictions, the director is not required to provide liability relief for errors resulting from reliance on the information provided by the state. The Agreement provision only allows the state to not provide relief from liability for errors in a zip code based database if an address based database is provided.
2. The statute cited for the rounding rule required in Section 324, paragraph B1 does not address allowing rounding to be applied to aggregated state and local taxes.
3. The rule cited for Section 329, paragraphs 1 and 2 provides that the rate changes will applied on a bill dated "after" the effective date of the change instead of "on or after" the effective date.

**Iowa response:**

Iowa indicated that they do provide relief from liability with respect to errors in the address based database and that they will request clarifying legislation next session (issue 1). With respect to issues 2 and 3, the state provided rule citations. The rule provided for effective dates applies to services provided with sales of tangible personal property. Iowa indicated that they will make changes to the rules and that they do administer effective dates in conformance with the Agreement.

### **Kansas**

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

Vote: 6-0; Atchley, Vosberg, Peters, Johnson, Mastin and Jennrich (Cram abstained)

Issue raised:

Kansas' statutory provision for the "lease or rental" definition (K.S.A. § 79-3602) complies with the SSUTA's definition. However, regulation K.A.R. 92-19-3a has conflicting terms on what constitutes a "financing lease." Subsection (a)(6) of the regulation specifies that a lessor is presumed to have a financing lease if the lease is a financing agreement for federal income tax purposes. In contrast, subsection (i)(1) of the regulation in addressing a "financing lease" ignores such characterization and appears to comply with the SSUTA definition.

Kansas response:

The state will amend the regulation for clarification. The statute is correct and controls in this situation.

### **Kentucky**

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

Vote: 7-0, Atchley, Vosberg; Peters, Cram, Mastin, Johnson and Jennrich

Issues raised:

1. According to the taxability matrix, bottled water is taxable. Bottled water is not defined and is not excluded from food and food ingredients.
2. In Section 317 of the certificate of compliance, the statute provided does not address blanket exemption certificates. The regulation cited only covers resale certificates and not to other types of exemptions.
3. In Section 324 of the certificate of compliance (rounding rule), the state answered N/A for paragraph B.1. The state has no local taxes so that is appropriate with respect to aggregation of state and local taxes. However, that does not address the provision to allow tax to be computed on an invoice or item basis.

Kentucky response:

Kentucky agreed that bottled water should be treated as food and food ingredients and changed the taxability matrix. The state clarified that the Streamlined Exemption Certificate posted on their website is a blanket certificate unless designated otherwise by the purchaser. The use of the certificate as blanket or single purchase is at the discretion of the purchaser (issue 2). The state indicated that it does not restrict how the rounding rule is applied and that the taxpayer can compute tax on an invoice or item basis (issue 3). A comment to that effect was added to the certificate of compliance.

### **Michigan**

Finding: CRIC recommends that Michigan be found out-of-compliance with the Agreement regarding issue 1. The remaining issues were resolved.

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

Issues raised:

1. The statute for taxing telecommunications service excludes one-way paging service. Paging service is defined in the Agreement and includes both one-way and two-way service. The Governing Board ruled in their August 2010 meeting that they would have to be all taxable or all exempt.
2. The statute cited for the taxation of intrastate and interstate prepaid calling service taxes prepaid telephone calling cards and prepaid authorization numbers for telephone use. These terms are not defined in the Agreement.
3. Several exemption statutes provide that the exemption applies to the extent used for exempt purposes and that a percentage will be developed. If administered by the seller, this procedure violates the prohibition on caps and thresholds.

Michigan response:

The state has not addressed the paging issue (issue 1) yet, but plans to seek legislation. With respect to issue 2, the state does not tax the prepaid services. The tax is imposed on the cards and authorization numbers. The apportionment procedures for certain exemptions are administered by the purchaser and not by the seller (issue 3).

### **Minnesota**

Finding: CRIC recommends that Minnesota be found out-of-compliance with the Agreement regarding issue 1. Note: The state was found out of compliance in 2010 because ringtones were taxed and digital audio works were not. The statute has been changed to exempt ringtones effective 10/1/2011.

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

Issue raised:

1. The definition of “prepared food” does not include “two or more food ingredients mixed or combined by the seller for sale as a single item.” Also, the definition includes food sold without eating utensils in an unheated state

by weight or volume as a single item, but exempts ready-to-eat meat and seafood in an unheated state sold by weight.

Minnesota response:

The state indicated this issue has never been raised before and that the exemption has been noted on their taxability matrix every year. Minnesota takes the position that is a minor deviation and should not make them substantially out of compliance with the Agreement.

### **Nebraska**

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

Vote: 7-0; Yes: Atchley, Mastin, Vosberg, Cram, Peters, Johnson and Jennrich

Issues raised:

1. In Section 305, the state indicates that it does provide an address based database, but that the database does not meet the requirements of the Federal Mobile Telecommunications Sourcing Act.
2. In Section 314, air-to-ground radio-telephone service and prepaid calling service are not excluded from the sourcing for mobile telecommunications service.
3. "Place of primary use" is defined in terms of mobile telecommunications services only. It should apply to other types of telecommunications also.
4. The statute and regulations do not address allowing the rounding rule to be applied to aggregated state and local taxes.
5. Under relief from liability for purchasers (Section 331), the statute cited provides relief for sellers and CSPs that relied on erroneous data provided by the state on rates, boundaries, taxing jurisdictions or on the taxability matrix. It does not relieve a purchaser whose seller or CSP relied on such information.
6. The BAC sought confirmation that Nebraska's tax on electronic mailing and prospect lists, per § 332.D.2 and D.4 of the SSUTA, are only imposed on an end user having a permanent use of such lists not conditioned on continued payments.

Nebraska response:

With respect to issue 1, the state indicated that their database provided more information than what is required by the Mobile Sourcing Act and changed their response to "yes." Nebraska confirmed that the tax on electronic mailing and prospect lists are only imposed on an end user having a permanent use of such lists not conditioned on continued payments (issue 6). With respect issues 2-5, the state indicated that they interpreted their statute and rules in a manner that complies with the Agreement.

### **Nevada**

Finding: CRIC recommends that Nevada be found out-of-compliance with the Agreement regarding issues 1 and 2. All other issues were resolved. Note: 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 which is expected to be implemented by the end of the year.

Vote: 7-0; Vosberg, Peters, Atchley, Jennrich, Johnson, Mastin and Cram

Issues raised:

1. In Section 305, paragraph B, no citation was given for the provision related to the effective date for catalog sales. Is this provision documented anywhere?
2. The state adopted direct mail sourcing provisions legislatively in 2011. The new statute provides that if the purchaser gives the seller a direct mail form or other written form or exemption certificate claiming direct mail, a seller who maintains a place of business in the state must collect tax to locations in the state where the direct is delivered. The Agreement provides that all sellers are relieved of any obligation to collect tax if they receive such documentation.
3. The rounding rule statute does not contain a provision allowing the aggregation of state and local taxes.
4. In Section 330, the citation given for transactions including telecommunications services, Internet access, ancillary services or audio or video programming services only defines bundled transactions.
5. In Section 331, the citation given for relief for liability for purchasers does not address situations where the purchaser's seller or CSP relied on erroneous information in the state's databases.

Nevada response:

On issue 1, Nevada agreed that it did not have the 120-day provision for catalog sales in its statute or rules and indicated that they would seek legislation in the next session (2013). They noted that local jurisdictions could not change their rates until then since enabling legislation is required. The state tried to get conforming language for the direct mail sourcing, but legislative counsel felt it was a substantive change requiring a constitutional amendment. The Department will try to convince them it isn't substantive and if unsuccessful try to get the issue on the next ballot (issue 2). The state indicated that taxes are reported in the aggregate on the return and that aggregating state and local taxes for rounding purposes is allowed (issue 3). With respect to issue 4, the state provided a regulation that covers bundled transactions and indicated that they do administer the provisions in compliance with the Agreement. The state will change the regulation to clarify the application of the provisions to these services. The state indicated that they interpret their statutes to provide relief for purchasers whose seller or CSP relied on erroneous information in the state's databases (issue 5).

### **New Jersey**

Finding: CRIC recommends that New Jersey be found out-of-compliance with the Agreement regarding issue 2.

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



Issues raised:

1. In Section 317, paragraphs A7, A8, B and C, the citation given is for the old rule which requires good faith. This was an issue last year and the state indicated the rule would be repealed.
2. As indicated in the recertification letter, the state is unable to accept the SER from anyone except Model 1 sellers (Section 318).

New Jersey response:

The state indicated that there is a more recent rule that takes precedence. A technical bulletin explaining exemption administration rules has been posted on their website and auditors have been trained. The state plans to merge the two rules, deleting the good faith requirement where needed (issue 1). The state self-reported their inability to accept the SER except from Model 1 sellers.

### **North Carolina**

Finding: CRIC recommends that North Carolina not be found out-of-compliance with the Agreement. All issues were resolved.

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

Issues raised:

1. Under the general sourcing rules for sales, the fifth option does not include “from which the digital good or computer software delivered electronically was first available for transmission by the seller.” Digital goods and prewritten computer software transferred electronically are taxable.
2. The responses for Section 318, paragraphs D (no return required if no sales expected to be made) and F (30 days’ notice for failure to file) are “yes” but no citations are given. Is this documented anywhere?
3. The rounding rule statute does not contain a provision allowing the aggregation of state and local taxes.
4. The citations given in Section 502, paragraph B do not address relief from liability for reliance on the certification of the CAS. In paragraph C, the citations do not address liability relief for CSPs in the same manner as that provided for sellers in Section 317.

North Carolina response:

The state posted a policy notice on their website providing for sourcing digital goods and computer software as required by the Agreement (issue1). The Streamlined Sales Tax webpage was updated to address issue 2. Technical Bulletin TB 1-5C was updated to include the provision for aggregation of state and local taxes when rounding (issue 3). The state provided the relevant citation that allows for Section 502 relief from liability (issue 4).

### **North Dakota**

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

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

### **Ohio**

Finding: CRIC recommends that Ohio be found out-of-compliance with the Agreement regarding issue 1. The remaining issues were resolved. Note: Ohio was ruled out of compliance in 2010 because the rule related to telecommunications sourcing did not contain the definitions of “communications channel” and “customer channel termination point.” The state is in the process of amending the rule to add these definitions.

Vote: 4-1: Yes: Vosberg, Peters, Atchley and Mastin; No: Johnson

Issues raised:

1. In Section 305, paragraphs B and C, the citation given for effective dates related to catalog sales and boundary changes limits the notice requirement to sellers registered under the centralized registration system. The Agreement provides for notice to all sellers.
2. The rounding rule in the statute requires state and local taxes to be aggregated (Section 324).
3. The definition of “prepaid wireless calling service uses the term “units of dollars” instead of “units or dollars.”

Ohio response:

Ohio agreed that the statute needs to be corrected regarding notice of rate changes, but indicated that administratively notice is given to all sellers (issue 1). The state took the position that the Agreement allows requiring state and local taxes to be aggregated for rounding (issue 2). The state will request legislation to change the definition of prepaid wireless calling service in the statute (issue 3).

### **Oklahoma**

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

Vote: 6-0; Atchley, Vosberg, Cram, Jennrich, Johnson and Peters (Mastin abstained)

Issues raised:

1. With respect to sourcing leases or rentals in Section 310, the statute is correct. However, Rule 710:65-18-4 sources the first periodic payment for leases or rentals of motor vehicles, trailers, semi-trailers or aircraft under the rules for retail sale instead of to the primary property location.
2. The state answered “no” to the question in paragraph D of Section 318 which would mean that a return is required from a seller that is registered under the Agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to the state under the Agreement. No citation is given.

3. The citation given for paragraph F of Section 318 does not address giving 30 days' notice to a seller registered under the Agreement before establishing liability for taxes solely due to a seller's failure to timely file a return. Is this documented elsewhere?
4. The state's rounding rule requires that state and local taxes be aggregated. The Agreement provides that the state "shall allow" the rounding rule to be applied to aggregated state and local taxes.
5. Oklahoma separately imposes a sales tax on the installation of telecommunications equipment (see OAC 710:65-19-329) outside of its "sales price" definition (see 68 O.S. § 1352(12)).

Oklahoma response:

The state indicated there was a scrivener's error in the rule and that it would be corrected. The statute is correct and controls (issue 1). The response was changed to "Yes" for issue 2. The Oklahoma Tax Commission does not require the filing of a return as required under the Agreement. No citation is currently available. A rule will be promulgated to evidence this policy. With respect to issue 3, the state explained that its administrative procedures are in compliance with the Agreement. Section 221 of Title 68 provides that the Commission may determine an amount of tax due in the case of a failure to timely file a return. Section C specifically provides that no liability is established until after the taxpayer has been provided notice and given 60 days to respond. On issue 4, the state said it had interpreted the rounding provision to require aggregation, but did not believe the Agreement required separate calculation for state and local rates. The state took the position that the Agreement allows separate taxation of certain items included in the definition of "sales price" (issue 4).

**Rhode Island**

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

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

Issues raised:

1. In Sections 313 (Direct Mail Sourcing), Section 318 (Uniform Tax Returns), paragraphs D and F, and Section 331 (Relief from Liability for Purchasers), the citation given is the statute that adopts the Streamlined Sales Tax Agreement and gives the tax administrator the authority to promulgate rules and regulations. These sections are in Article III. The statute has not been updated for the provisions noted.

Rhode Island response:

A rule addressing these provisions is being promulgated and should be effective December 1, 2011. A notice was posted on the state website. The state has authority to adopt rules to implement provisions of the Agreement and is following these requirements administratively.

## **South Dakota**

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

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

Issue raised:

In Section 318, paragraphs D (no filing of returns if no sales expected) and F (30 days' notice before establishing a liability amount for failure to timely file) are marked "Yes" and no citation is given. Are these positions documented anywhere?

South Dakota response:

The state posted a policy notice on the state website to address these issues. The state is in compliance with the Agreement requirements.

## **Tennessee**

Finding: CRIC recommends that Tennessee be found out-of-compliance with number 10 of Section 801.1 of the Agreement, Associate Memberships Requirements, regarding issues 1 and the drop shipment portion of issue 2.

Vote: 3-2; Yes: Vosberg, Peters and Johnson; No: Atchley and Mastin

Issues raised:

1. No provision was found 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.
2. 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, 2013.
  - 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.

3. The definition of “post-paid calling service” does not exclude prepaid wireless calling service.
4. The definition of “prepaid wireless calling service” uses the words “units of dollars” instead of “units or dollars.”

Tennessee response:

The state said the laws to accomplish most of the issues were scheduled to take effect on July 1, 2013 (issues 2 and 3). 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 1). Tennessee will seek legislation to correct the prepaid wireless definition next session (issue 4).

### **Utah**

Finding: CRIC recommends that Utah be found out-of-compliance with the Agreement on issue 1.

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

Issue raised:

1. In Section 319, the provisions for effective dates with respect to rate decreases for services covering a period of time only address repeals of a tax and are based on bill periods instead of the dates bills are rendered. Bills can be rendered several days after the actual billing period date.

Utah response:

The state agreed that the statutory language is based on bill date and not date rendered and will seek a legislative change.

### **Vermont**

Finding: CRIC recommends that Vermont be found out-of-compliance with the Agreement on issue 2. The remaining issues were resolved.

Vote: 6-0; Johnson, 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) 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).
2. The statute taxes “specified digital products transferred electronically to an end user.” The taxability matrix and the certificate of compliance indicate that these products are taxable whether or not they are sold with the rights of use less than permanent or conditioned on continued payment. In the Agreement, it is presumed that specified digital products are sold to an end user with rights for

- permanent use unless the statute specifically imposes tax on less than permanent use or conditioned on continued payments.
3. In Section 318, paragraph F is marked “Yes” for the provision requiring a state to give sellers that have no legal requirement to register in the state 30 days’ notice prior to establishing a liability for taxes based solely on the seller’s failure to file a return. No citation is given. No citation or documentation is provided.
  4. The definition of “prepaid wireless calling service” in Reg. 1.9771(5)-1(A)(6) says “sold in predetermined units of dollars” instead of “predetermined units or dollars.”
  5. The regulation cited in Section 329 for effective dates of rate changes for services covering a period starting before or ending after the statutory effective date is for “effective date of rate changes for Streamlined Sales Tax Registrants and Sellers that bill charges subsequent to the time of sale.” The Agreement provision is for services billed both before and after they are provided.
  6. In Section 324, the rounding rule in the statute does not address allowing the rule to be applied to aggregated state and local taxes.

Vermont response:

The state posted a policy statement regarding the relief from liability provisions (issue 1) on their website. After further review, Vermont agreed that clarifying legislation was needed to support their position that specified digital goods sold for less than permanent use or conditioned on continued payments are taxable (issue 2). The state posted a policy notice regarding 30 days’ notice for failure to file on the state website (issue 3). The miscellaneous tax bill next session will include a technical correction for the definition of “prepaid wireless calling service” (issue 4). With respect to issue 5, the body of the rule contains the correct “on or after” language. The heading will be changed for clarity. The state indicated that aggregating state and local taxes is allowed for rounding purposes and a legislative change will be sought to clarify this position (issue 6).

**Washington**

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

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

Issues raised:

1. On the taxability matrix, the local service exemption should indicate that it applies to residential service only. The exemption is limited.
2. The state’s rounding rule requires that state and local taxes be aggregated. The Agreement provides that the state “shall allow” the rounding rule to be applied to aggregated state and local taxes.
3. In Section 318, paragraphs D (sellers who do not expect to have sales in the state) and F (30 day notice if failed to file a return) are marked yes but no citation or other documentation is given.

Washington response:

The state agreed to add a clarifying comment to the taxability matrix with respect to the local service exemption (issue 1). The state took the position that the Agreement allows a state to require aggregation of state and local taxes for purposes of rounding (issue 2). With respect to issue 3, a citation was added that provides that returns are only due after a taxable sale is made. The state follows the 30 day rule for notice for failure to file as a matter of policy and added a notice to that effect on the state website.

### **West Virginia**

Finding: CRIC recommends that West Virginia be found out-of-compliance with the Agreement on issue 3. All other issues were resolved.

Vote: 7-0, Peters, Atchley, Vosberg, Cram, Jennrich, Johnson and Mastin

#### Issues raised:

1. Under Section 324, the rounding rule does not contain the provision allowing the aggregation of state and local taxes (no local taxes are currently imposed, but will be effective 10/1/11).
2. The taxability matrix indicates that over-the-counter drugs for human use with a prescription are exempt and that grooming and hygiene products for human use are taxable. The state definition of over-the-counter drugs does not exclude grooming hygiene products.
3. The BAC took issue with West Virginia requiring motor vehicle lease payments to be made to the West Virginia Division of Motor Vehicles. See W.V.C. § 11-15-3c(f)(10). This requirement does not conform to the single entity requirement in § 301 of the SSUTA and it does not comply with the uniform return and remittance provisions in §§ 318 and 319 of the SSUTA.
4. West Virginia's statutory provision for the "lease or rental" definition (W. Va. Code § 11-15B-2(b)(28)) complies with the SSUTA's definition. However, regulation W. Va. C.S.R. § 110-15-129 has conflicting terms on what constitutes a "financing lease." Subsection 129.2.1.2.a and b of the regulation presume a lease is a "financing lease" (a lease treated as a "sale" rather than a "lease") if the lease term constitutes 75% or more of the property's economic life or the residual value is less than 10% of the fair market value of the property at the beginning of the lease. This is not compliant with the SSUTA's provision that only looks at the price paid to transfer the leased property at the end of the lease.

#### West Virginia response:

The state indicated that it will need to change its rounding rule, but that as of August 1 it was in compliance with the Agreement as no local taxes were imposed at that time (issue 1). The state said that grooming and hygiene products bought pursuant to a prescription would be exempt and that the taxability matrix needed to be revised to provide that option (issue 2). The state agreed that separate registration, returns and payments were required for motor vehicle leases (issue 3). With respect to issue 4, the statute is correct and controls. The state agreed to note on the certificated of compliance that the regulation is incorrect and to change the regulation.

## **Wisconsin**

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

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

Issues raised:

1. The rounding rule in the statute provides that the rule shall (as opposed to be allowed to) be applied to aggregated state and local taxes.
2. The prepaid wireless calling definition uses the term “dollar units” instead of “units or dollars.”

Wisconsin response:

The state takes the position that requiring aggregation is allowed by the Agreement (issue 1). The state will seek a legislative change to correct the prepaid wireless calling service definition (issue 2).

## **Wyoming**

Finding: CRIC recommends that Wyoming be found out-of-compliance with the Agreement regarding issue 1. The remaining issue was resolved. Note: The state was ruled out of compliance in 2010 for not having a statute or rule related to exemption administration 90 day and 120 day rules (s. 317) and for not following the requirements for effective dates for rate changes with respect to services covering periods starting before and ending after the statutory effective date (s.329). Rules to provide for these provisions are in the process of being promulgated.

Vote: 5-0, Atchley, Cram, Vosberg, Jennrich, and Johnson

Issues raised:

1. The statute exempts “the sale of the service of transmitting radio waves to a one-way paging unit.” The state interprets this to include one-way and two-way paging. A rule is being promulgated to clarify this position.
2. The definition of “prepaid wireless calling service” uses the words “units of dollars” instead of “units or dollars.”

Wyoming response:

The state is in the process of promulgating rules to conform to the Agreement provisions noted in issue 1. The definition of prepaid wireless calling service will be corrected in legislation next session.