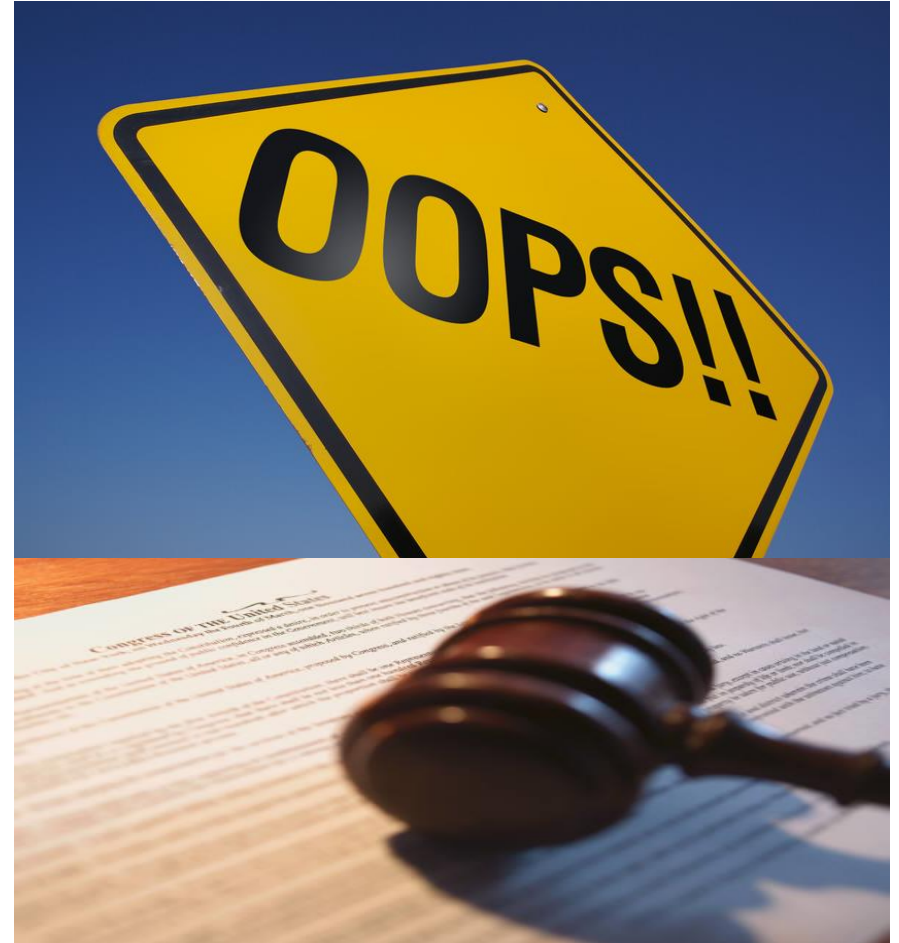


Substantial Compliance



Perceived View of Some



Constructive View – Tweak Needed to Retain Compliance with Agreement

Importance of Compliance

- While any person (including a state) can technically raise a compliance issue at any time, the annual compliance review process is an efficient means of verifying the states are compliant with the Agreement
- Reasons to Address Compliance Concerns
 - Prevents degradation of the Agreement's uniformity/simplicity principles
 - Reduces sellers' and buyers' compliance costs and their exposure to additional taxes and legal costs
 - Qui Tam, Class Action & Consumer Protection Laws
 - Demonstrates to Congress that the states are serious about uniformity

Potential Improvements to Process

- Clearly separate “compliance” issues from any potential “sanctions”
 - The focus is on giving a state not in compliance with the Agreement notice that the state has an issue it needs to address
 - Non-Compliance finding formally notifies the state that it has an issue that needs to be fixed
 - State’s tax agency made clearly aware that an issue must be addressed
 - State’s legislature objectively informed the state has a compliance issue (not just an opinion from the state’s tax agency)

Potential Improvements to Process

- Time to achieve compliance should not be an impediment to finding state out of compliance
 - A common concern to finding a state out of compliance is that the “will” for the state to fix the problem is lacking
 - Absent a serious compliance issue, the focus does not need to be on the timeframe for a state to regain compliance with the agreement
 - The state and, importantly, the *sellers and purchasers* need notice that there is a compliance issue

Potential Improvements to Process

- Serious issues – such as a state not meeting a requirement for associate membership – should be addressed within a specific period of time
 - Depending on the situation, a state should be provided with at least two years (or at least one full legislative cycle) to address a serious compliance issue
 - If compliance is not met, there are other options besides expulsion—such as reduction from full member status to associate membership status
 - What constitutes a serious issue needs to be objective
 - Rule 801.1 defining requirements for associate membership may be a good starting point

Potential Improvements to Process

- A state with any compliance issue should clearly note the compliance issue on its taxability matrix and/or other applicable document to notify sellers and purchasers of the compliance issue
 - To the fullest extent possible, a state should grant relief to a seller that was not aware of a state's noncompliance and is negatively impacted by it
- Mistakes can happen – the Governing Board should clearly be allowed to revise its position on a compliance issue and/or modify a sanction
- Amendments to the Agreement – The Agreement should be clarified to not find a state out of compliance during the two-year period the state has to conform to an amendment (or other effective date used when an amendment was adopted); presently, a state is not “sanctioned” for failing to comply with a requirement of the Agreement during this period