

A motion by North Dakota to amend Rule 803 relating to the annual compliance review:

Rule 803. Annual Recertification

- A. **Recertification Requirement.** Pursuant to Section 803 of the Agreement, each member state shall annually recertify to the Governing Board by August 1 of each year that the state is in compliance with the Agreement. A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.

1. Recertification Documents

- a. On or before August first of each year, each member state shall submit to the Executive Director either a statement certifying that the state is in compliance with the Agreement as it exists on August first of the year or a statement of noncompliance.
- b. With the statement, each member state shall submit:
- (1) The certificate of compliance issued for the recertification period that sets out the state's statutes, rules, regulations, and other authorities adopted to comply with the specific provisions of the Agreement as of August first of the year;
 - (2) A list and the effective date of any of the state's statutes, regulations, or written policies to remain or come into compliance that have changed since August first of the prior year;
 - (3) Its most current taxability matrix;
 - (4) A statement disclosing any known items of noncompliance with a description of the action the state intends to take to remedy the noncompliance; and
 - (5) A list of any significant administrative or judicial decisions (regardless of outcome) that impact the state's compliance since August first of the prior year.

2. Posting documents. Each member state shall post its statement of recertification or its statement of noncompliance and all supporting recertification documents on the state's web site on or before August first of each year. The Executive Director shall post all recertification filings on the Governing Board's web site.

- B. **Review Responsibility.** Pursuant to Article 7, Section 2 of the bylaws, the Compliance Review and Interpretations Committee (CRIC) is responsible for reviewing each state's annual recertification filings, determining any needs for re-assessment and recommending to the Governing Board findings of non-compliance.

C. CRIC Evaluation and Report

1. On or before September 30 of the recertification year, the Executive Director shall:
- a. Review all statements and accompanying documents;
 - b. Conduct a state-by-state review of each state's compliance with the Agreement; and
 - c. Issue an initial written report to CRIC listing potential compliance issues for each member state or stating there are no compliance issues. The Executive Director shall

publish the initial written report on the Governing Board's web site and CRIC shall hold at least one meeting to discuss the report and schedule dates for states and the public to submit comments.

2. Providing at least thirty days notice, CRIC shall give states and the public the opportunity to submit written comments to CRIC. Such responses and comments shall be delivered to the Executive Director who shall notice the public of their filing and publish those documents on the Governing Board's web site.

3. Providing at least ten days notice or until CRIC completes its review of a subject state's compliance review, whichever is later, CRIC shall give the states and the public the opportunity to submit written comment to CRIC solely to address any issues previously raised in CRIC's report or to address comments received from the state or the public. Such responses and comments shall be delivered to the Executive Director who shall notify the public of their filing and publish those documents on the Governing Board's web site.

4. On or before November 30 of the recertification year, CRIC shall issue its final report to the Governing Board. Such report shall:

a. Summarize, as practical, the comments received from the member states and the public;

b. Describe how CRIC addressed those comments; and

c. State how each CRIC member voted.

5. If any date provided in this rule falls on a weekend day, federal holiday or a banking holiday in a member state, such date shall be the next day that is not a weekend day, federal holiday or banking holiday in a member state.

6. The CRIC chair, for due cause shown, may extend the September 30 or November 30 deadlines establish in this section.

D. **Review Standards**

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

2. **Determination of Compliance**

a. A member state is presumed to be in compliance. Except as provided in subparagraph b of this paragraph, if documentation is provided to CRIC indicating a state is not in compliance, such state has an affirmative duty to explain how it is in compliance.

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

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

- E. **Public Notice.** The Executive Director shall provide notice and copies of any statements of noncompliance received by a member state and any findings of noncompliance by the CRIC to and shall solicit comments from the following parties:
1. the authorized representative of each member state;
 2. the Chair of the State and Local Advisory Council;
 3. the Chair of the Business Advisory Council; and
 4. the general public as provided in Rule 806.2.
- F. **Agenda.** If possible, by December 31 of the recertification year any statements of noncompliance from a member state and any findings of noncompliance by the CRIC shall be placed on the agenda of the Governing Board for either a regular meeting or a special meeting. In addition, upon a motion at that same meeting, the Governing Board shall determine if a state is out-of-compliance that did not have a finding of noncompliance by CRIC based on documentation reviewed by CRIC or submitted to the Governing Board. If a member state is found to be out of compliance by the Governing Board, the member state shall be subject to sanctions as authorized under Section 809 of the Agreement.
- G. **Appeal.** If any person disagrees with the Governing Board's determination, that person may invoke the issue resolution process provided for in Section 1002 of the Agreement.
- H. **Publication of the Decisions.** Once the decision of the Governing Board becomes final, either because no appeal is filed or the appeal procedures have been exhausted, the decision shall be sent to the subject state and a copy of the decision shall be posted on the Web. The Governing Board's web site shall list the following for each state found not in compliance:
1. The date a state was found not in compliance;
 2. The noncompliance issue(s);
 3. The sanction(s) imposed with any timeframes; and
 4. When known, the date the state will return to compliance.