

Streamlined Sales Tax Governing Board, Inc.

To: Rep. Brian Patrick Kennedy, President
Streamlined Sales Tax Governing Board

From: Streamlined Sales Tax Governing Board Compliance Review and Interpretations
Committee - David Steines, Chairman

Subject: 2019 State Annual Compliance Review Report

Date: September 24, 2019

The Compliance Review and Interpretations Committee (CRIC) has completed its annual recertification review of member states in accordance with Rule 803 of the Streamlined Sales Tax Governing Board, Inc. CRIC, with assistance from Governing Board staff reviewed member states' (states) compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) following each state's submission of its statement of compliance (or statement of noncompliance) and updated online certificate of compliance and taxability matrix.

Governing Board staff made an initial review of each state's certificate of compliance and taxability matrix and identified issues of possible noncompliance with the Agreement. (Note: If needed, the staff also contacted states regarding suggested clarifications or corrections to the citations on the certificates of compliance and taxability matrix. These types of items were not included on the report if the state made the necessary changes and submitted a revised taxability matrix or certificate of compliance as needed.) Staff raised possible compliance issues with Georgia and Rhode Island. The states and the public had a fifteen-day period to respond to the issues raised by the staff and to raise additional issues of possible noncompliance. One public comment was received in that fifteen-day period raising issues with 2 additional states, Indiana and Michigan. States and the public were given an additional ten days to respond to any issues raised or to respond to comments made during the original fifteen-day comment period.

CRIC held a public hearing on September 17, 2019, during which each state responded to the CRIC members, Governing Board staff and public regarding any questions or issues of possible noncompliance. The public was also given an opportunity to comment or raise other concerns with states' compliance. At this time another question was raised with respect to Rhode Island's compliance as it related to specified digital goods by representatives of the Business Advisory Council.

CRIC took a public vote on whether each state was or was not out-of-compliance with the Agreement pursuant to Section 805. A single vote was taken for the 19 states that did not receive public comments and no other issues were raised in the review. Those states were AR, IA, KS, KY, MN, NE, NV, NJ, NC, ND, OH, OK, SD, UT, VT, WA, WV, WI and WY. Separate votes were taken on GA, IN, MI and RI.

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All votes were made taking a voice vote and were unanimous, unless it is specifically noted that a roll call vote was taken along with the corresponding vote. All CRIC members abstained from voting on their own state's compliance.

Three issues were carried over from the 2018 review that had not been resolved by the August 1, 2019 recertification date and, therefore, were not considered during the 2019 review. The issues are as follows:

1. How 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 several years ago. Work on this issue was put on hold and the Governing Board is continuing to monitor federal legislation in this area.
2. In Section 314.C.3 of the Agreement, 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 should be clarified with respect to the option to use the mobile phone number when sourcing prepaid wireless calling service. CRIC recommended the issue be assigned to SLAC or the Executive Committee to seek a final resolution.
3. Under the Agreement, is access to prewritten computer software treated as tangible personal property, other products transferred electronically, or either as tangible personal property or other products transferred electronically? This issue was referred to SLAC in 2011 for resolution by the State and Local Advisory Council's Remote Access to Prewritten Computer Software Workgroup. No final decision was made and accordingly, CRIC has deferred this issue. The Business Advisory Council has indicated that it is amenable to the continued deferral of the issue, but has noted that their agreement should not be interpreted as acceptance to statements made by the member states on the issue.

The following summary includes: CRIC's finding as to whether the state is or is not out of compliance with the Agreement, the result of CRIC's vote on the finding for each state, a summary of the issues raised for each member state and the state's response.

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:

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Arkansas

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

Vote: 5-0; Steines, Jennrich, Matelski, Harper and Jares (One vacancy and Atchley abstained)

Georgia

Finding: CRIC finds that Georgia remains out-of-compliance with the Agreement on the exemption administration/good faith issue, SER acceptance issues, the cap of \$35,000 in tax on boat repairs and the exemption for food to an equalized homestead option sales tax.

Vote: 6-0; Yes Atchley, Harper, Jares, Jennrich, Matelski, and Steines (One vacancy)

Issues:

The legislature in 2012 reinstated the “good faith” requirement for accepting exemption certificates. The legislature did not make any change to this provision during the last legislative session. The Department of Revenue is working with their Legislature to resolve this issue.

The state accepts the SER from Model 1 sellers only. The SER schema has limitations that will not allow the (1) correct vendor compensation to be computed for sellers with multiple locations in Georgia and (2) correct reporting of differences in the state and local tax bases that are allowable under Section 302 of the Agreement. Sellers receive more vendor compensation for local taxes if they do not use the SER. The Certification Committee is considering possible revisions to the SER schema to address the Section 302 issues. The state has previously state indicated that they have not received any requests for use of the SER by other than Model 1 sellers, from whom they accept the return.

The legislature enacted a cap of \$35,000 in tax (\$500,000 in sales) on boat repairs. This type of cap is not allowed “...unless the member state assumes the administratively responsibility that places no additional burden on the retailer.”

The legislature extended the exemption for food to an equalized homestead option sales tax if such local tax is passed by referendum. This provision is intended for one county. Food is not exempted from other local sales taxes. Effective April 1, 2018 this provision became effective in DeKalb County.

Indiana

Finding: CRIC recommends that Indiana be found not out-of-compliance with the Agreement.

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Public comment by Howard Miller from Tax Jar stated that Indiana does not allow model 4 sellers or sellers not registered under the agreement to file a SER and that Indiana is unable to allow tax preparers to utilize web services as the standardized transmission process of the uniform tax return. Indiana responded that they have allowed persons other than certified service providers to file the SER using webservices and that if someone currently came to them, they would be ready to work with them so they could file the SER. Indiana also indicated that they have implemented project procedures to deploy a plan and resource allocation that will enable Indiana to review and make changes to its system to accommodate TaxJar's filing request.

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Iowa

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Kansas

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski Steines (One vacancy)

Kentucky

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Michigan

Finding: CRIC recommends that Michigan be found not in compliance with the Agreement with respect to being able to accept SERs via webservices by persons other than certified service providers.

Public comment by Howard Miller from Tax Jar stated that Michigan is unable to allow tax preparers to utilize web services as the standardized transmission process of the uniform tax return. Michigan can only allow a certified service provider to utilize the web service. SER can be uploaded 1 by 1 using browser interface. Michigan indicated that it is still waiting to test the system on its end before allowing others to test utilizing this process.

Vote: 4-0; Yes: Atchley, Harper, Jares, Jennrich and Steines (One vacancy and Matelski abstained)

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Minnesota

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Nebraska

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Nevada

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

New Jersey

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

North Carolina

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

North Dakota

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Ohio

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

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Oklahoma

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Rhode Island

Finding: CRIC recommends that Rhode Island be found not out of compliance with the Agreement as of July 1, 2019. However, with respect to its imposition of tax on specified digital goods, although Rhode Island is not out of compliance as of July 1, if Rhode Island's imposition language and taxability matrix responses relating to specified digital goods do not change between now and October 1, Rhode Island would not be in compliance with the Agreement with respect to its imposition of tax on specified digital goods as of October 1, 2019.

Rhode Island noted in their certificate of compliance that they were not yet in compliance with Sec 318.D web services requirement. However, as of September 24, 2019, they indicated that they did deploy the changes necessary to meet this requirement. In addition, an issue was raised by the Business Advisory Council (BAC) during the public comment period regarding the provision imposing tax on specified digital goods that takes effect on 10/1/2019. The BAC indicated that the statutory language did not clearly indicate that the tax was only imposed on end users, that the tax was imposed if continued payments are required or that the tax was imposed on less than permanent use. However, their taxability matrix indicated that these situations were all subject to tax. It was noted that the compliance review is based on their laws in effect as of July 1, 2019, but that if this is Rhode Island's interpretation of their law, it would not be consistent with the requirements of Section 332.D of the Streamlined Sales and Use Tax Agreement as of October 1, 2019.

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy).

South Dakota

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

Vote: 5-0; Yes: Atchley, Harper, Jennrich, Matelski and Steines (One vacancy and Jares abstained)

Tennessee (Associate Member State)

Finding: CRIC recommends that Tennessee be found not out-of-compliance with the requirements of the Agreement as an Associate Member State. There were no issues identified.

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

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Utah

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

Vote: 5-0; Yes: Atchley, Jares, Jennrich, Matelski and Steines (One vacancy – Harper abstained)

Vermont

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Washington

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

Vote: 5-0; Yes: Atchley, Harper, Jares, Matelski and Steines (One vacancy and Jennrich abstained)

West Virginia

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)

Wisconsin

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

Vote: 5-0; Yes: Atchley, Harper, Jares, Jennrich and Matelski (One vacancy and Steines abstained)

Wyoming

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

Vote: 6-0; Yes: Atchley, Harper, Jares, Jennrich, Matelski and Steines (One vacancy)