

Streamlined Sales Tax Governing Board, Inc.

To: Timothy Jennrich, President
Streamlined Sales Tax Governing Board

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

Subject: 2020 State Annual Compliance Review Report

Date: September 17, 2020

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, Kentucky and Tennessee. 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. No public comments were received in that fifteen-day period. 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 15, 2020, 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. No additional issues were raised during that meeting.

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 21 states that did not receive public comments and no other issues were raised in the review. Those states were AR, IN, IA, KS, MI, MN, NE, NV, NJ, NC, ND, OH, OK, RI, SD, UT, VT, WA, WV, WI and WY. Separate votes were taken on GA, KY and TN.

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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 2019 review that had not been resolved by the August 1, 2020 recertification date and, therefore, were not considered during the 2020 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 services. 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.

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State Action:

Arkansas

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

Vote: 5-0; Dobson, Matelski, Harper, Jares and Steines (Noble absent 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, Dobson, Harper, Jares, Matelski, and Steines (Noble absent)

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.

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Indiana

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

Vote: 6-0; Yes: Atchley, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

Kentucky

Finding: CRIC recommends that Kentucky be found not in compliance with the Agreement. One compliance issue was identified. A roll call vote was taken.

Kentucky requires separate returns for a marketplace facilitator/provider when reporting direct sales and sales made on behalf of marketplace sellers. Section 318 of the Agreement prohibits states from requiring more than one tax return from each seller for each reporting period.

Vote: 3-2; Yes: Steines, Jares and Matelski; No: Atchley and Harper (Noble absent and Dobson abstained)

Michigan

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

Vote: 5-0; Yes: Atchley, Dobson, Harper, Jares, and Steines (Noble absent and Matelski abstained)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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Rhode Island

Finding: CRIC recommends that Rhode Island be found not out-of-compliance with the Agreement. No issues were identified.

Vote: 6-0; Yes: Atchley, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Matelski and Steines (Noble absent 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 three issues related to TN's sales tax holidays identified.

Issues:

In 2020, the Tennessee legislature enacted Public Chapter 759 (2020), which creates a sales tax holiday, July 31 through August 2, for electronic devices with a price of \$3,000 or less per item that is for personal use. An "electronic device" includes but is not limited to computers, tablets, printers, televisions, cell phones, electronic readers and video game consoles. "Electronic device" is not a defined term under SSUTA Section 322.A.1.

The legislation established a second sales tax holiday for 2020, August 7 through August 9, for sales of food and drink by restaurants as defined in Tenn. Code Ann. § 57-4-102. The sales tax holiday for restaurant sales of food and drink is an entity-based holiday which is prohibited under SSUTA Sec. 322.A.3.

The state did not provide the 60-day notice before the holidays went into effect.

A vote was not taken on the sales tax holiday issues specifically because they do not affect Associate membership status.

Vote: 6-0; Yes: Atchley, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Jares, Matelski and Steines (Noble absent and Harper abstained)

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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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

Washington

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

Vote: 6-0; Yes: Atchley, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)

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, Dobson, Harper, Jares, and Matelski (Noble absent 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, Dobson, Harper, Jares, Matelski and Steines (Noble absent)