

# Streamlined Sales Tax Governing Board, Inc.

To: Senator Tim Reed, President  
Streamlined Sales Tax Governing Board

From: Streamlined Sales Tax Governing Board Compliance Review and Interpretations  
Committee – Alison Jares, Chair

Subject: 2023 State Annual Compliance Review Report

Date: October 5, 2023

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 in 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, Michigan, Ohio 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 comment was received in that fifteen-day period.

CRIC held a public hearing on September 19, 2023, during which each state responded to the CRIC members, Governing Board staff and the public regarding any questions or issues of possible noncompliance. The public was also given an opportunity to comment on or raise other concerns with states' compliance.

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, IN, IA, KS, KY, MN, NE, NC, ND, NV, OK, RI, SD, UT, VT, WA, WI and WY. Separate votes were taken on GA, MI, OH, TN, and WV.

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 2022 review that had not been resolved by the August 1, 2023,

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recertification date and, therefore, were not considered during the 2023 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:**

### **Arkansas**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

### **Georgia**

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

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exemption for food to an equalized homestead option sales tax.

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## Georgia 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 continues to work 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 from local taxes if they do not use the SER. The Certification Committee is considering possible revisions to the SER schema to address the 302 issues. The state has previously 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 administrative responsibility that places no additional burden on the seller.”

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. This provision became effective April 1, 2018, in DeKalb County.

## Indiana

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

Vote: 5-0; Yes: Childers, Dobson, Jares, Kennedy, and Matelski (Ralston abstained and Harper 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: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

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## **Kansas**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **Kentucky**

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

Vote: 5-0; Yes: Childers, Jares, Kennedy, Matelski and Ralston (Dobson abstained and Harper absent)

## **Michigan**

Finding: CRIC recommends that Michigan be found not in compliance with the Agreement.

### *Michigan Issue:*

In 2020, the MI Ct of App held that MI's rule incorporating the 75% prepared food threshold as required by the Agreement was invalid. MI had until 1/1/2023 to correct the issue or be found not in compliance. Although the issue has not been corrected, two House bills were introduced in April 2023 which would correct the issue and bring MI back into compliance.

**Note:** Subsequent to the CRIC meeting and voting on MI's compliance, the legislation to bring MI into compliance was approved by both the House and the Senate and the Governor signed the legislation on October 3, 2023.

Vote: 5-0; Yes: Childers, Dobson, Jares, Kennedy and Ralston (Matelski abstained and Harper absent)

## **Minnesota**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **Nebraska**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

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## **Nevada**

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

Vote: 5-0; Yes: Dobson, Jares, Kennedy, Matelski and Ralston (Childers abstained and Harper absent)

## **New Jersey**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper 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: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper 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: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **Ohio**

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

### **Ohio Issue:**

A potential issue was raised regarding a sales tax holiday that takes effect in 2024 that is not in compliance with Sec. 322. Since the current review is limited to laws in effect as of July 1, 2023, the issue does not impact this year's compliance but will be an issue in 2024.

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper 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: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **Rhode Island**

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

Vote: 5-0; Yes: Childers, Dobson, Jares, Matelski and Ralston (Kennedy abstained and Harper absent)

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## **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: Childers, Dobson, Kennedy, Matelski and Ralston (Jares abstained and Harper absent)

## **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: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **Utah**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **Vermont**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper 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: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **West Virginia**

Finding: CRIC recommends that West Virginia be found not out of compliance with the Agreement.

### **West Virginia Issue:**

Note: The Governing Board voted in 2022 to find West Virginia not out of compliance with Section 332 of the Agreement. The Business Advisory Council (BAC) filed a Petition for Resolution with the Governing Board in accordance with Article X of the Agreement. The recommendation developed in response to that Petition by the Issue Resolution Committee (IRC) was tabled at the May 2023 meeting and a workgroup was appointed to clarify the procedural issues raised by the IRC. The BAC's Petition for Resolution remains outstanding.

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **Wisconsin**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)

## **Wyoming**

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

Vote: 6-0; Yes: Childers, Dobson, Jares, Kennedy, Matelski and Ralston (Harper absent)