

SSTGB EXECUTIVE COMMITTEE
2023 COMPLIANCE ISSUE AND SANCTIONS RECOMMENDATIONS

Summary of Findings by the SSTGB and Current Status

Georgia

Georgia was voted to not be in substantial compliance with the SSUTA in October 2023. All four of the compliance issues also existed last year. Below is a brief description of each of the compliance issues:

1. **Good faith requirement for accepting exemption certificates (Section 317 of the SSUTA)** – Section 317 provides in part that “Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the date of sale...” Rather than just providing this liability relief to sellers who obtain a fully completed exemption certificate within 90 days subsequent to the sale, Georgia imposes a requirement under Section 48-8-38 that the exemption certificates must also be accepted in good faith. Although these additional requirements may be placed on a seller if the seller did not obtain an exemption certificate within 90 days subsequent to the sale, they cannot be placed on the seller if the seller obtained the fully completed exemption certificate within 90 days subsequent to the sale. Although Georgia complied with this provision when their membership was initially approved, the legislature reinstated the “good faith” requirement for accepting exemption certificates in 2012. To correct this issue, Georgia will need a legislative change and it was indicated that Georgia Department of Revenue officials have discussed the necessary corrections with the Streamlined legislative delegates for Georgia.
2. **Only accepts the SER from Model 1 volunteer sellers - Not able to accept the SER from Model 4 or other sellers at this time (Section 318 of the SSUTA)** – Under the Agreement, effective January 1, 2011 a state must allow Model 4 sellers to file the simplified electronic return (SER) and effective January 1, 2013 a state must allow all sellers, including those not registered under the Agreement to file an SER. Georgia currently only accepts SERs from Model 1 Sellers. The SER has limitations in its schema that will not accommodate correct vendor compensation for sellers with multiple locations in Georgia. Such sellers receive more vendor compensation if they do not use the SER. Georgia also indicated that due to the SER schema limitations, they do not believe the schema provides an adequate method for sellers to report the variations between the state and local tax base and rate differences that are allowed in Sections 302 and 308 of the SSUTA.
3. **Imposes a cap of \$35,000 in tax on boat repairs (Section 323.A of the SSUTA)** – Under the Agreement, caps and thresholds are not allowable (with very limited exceptions) “...unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.” To correct this issue, Georgia will need a legislative change and it was indicated that Georgia Department of Revenue officials have discussed

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the necessary corrections with the Streamlined legislative delegates for Georgia.

4. **Exemption For Food From Local Tax in One Local Jurisdiction (Section 308 of the SSUTA)** – 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. A referendum was passed and this provision became effective in DeKalb County on April 1, 2018. To correct this issue, Georgia will need a legislative change. Georgia indicated that the Georgia Department of Revenue personnel will discuss the necessary changes with the Streamlined legislative delegates for Georgia.

Status as of March 24, 2023 – No known change from above.

Nevada

Nevada was voted to not be in substantial compliance with the SSUTA in October 2022. The compliance issue that was raised existed last year but due to the legislature only meeting every other year, this is the first legislative session since the compliance issue was identified that they have the opportunity to correct the issue. Below is a brief description of the compliance issue

1. **Sales Tax Holidays – Entity-Based Exemption, no 60-day notice, seller must obtain documentation and other provisions of Section 322 not adopted - (Section 322 of the SSUTA)** – The legislature in 2021 expanded the entity-based exemption for sales to qualified members of the Nevada National Guard in SB440. The legislation provides for a new temporary sales tax exemption for all tangible personal property every year through 2031 on “Nevada Day” and the weekend immediately following the holiday. The exemption only applies to qualified Nevada National Guard members, thereby making it an entity-based exemption which is prohibited under SSUTA Section 322.A.3., the exemption applies to items that are not defined in the SSUTA (applies to all TPP) as required by Section 322.A.1., there was no 60-day notice as required by Section 322.A.2. and sellers are required to obtain and maintain documentation that the purchaser qualified for the exemption which is prohibited by Section 322.A.4. Nevada law also did not contain the provisions noted in Section 322.C.1 to 9. Related to items such as layaway sales, bundled sales, coupons and discounts, splitting of items normally sold together, rain checks, exchanges, delivery charges, order dates and back orders, returns and different time zones.

Status as of March 24, 2023 – Nevada Senate Bill 50 has been introduced to correct the compliance issue. It was amended and approved unanimously by the Senate Committee on Revenue and Economic Development. Still needs to go through Assembly process but no opposition anticipated.

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Update as of May 22, 2023 – Nevada Senate Bill 50, as amended was passed by the Nevada Legislature and signed by the Governor on May 17, 2023. This bill resolves Nevada's compliance issue.

Executive Committee Sanctions Recommendations

Georgia

Based on the above information and in accordance with Section 809 of the SSUTA and SSTGB Rule 809, the Executive Committee met and recommends the following sanctions:

- As long as the good faith issue exists, the recommended sanction is that Georgia is not allowed to vote on amendments to the SSUTA or on other states' compliance with the SSUTA.
- If the good faith issue is corrected, but one or more of the other issues have not been corrected, Georgia will be able to vote on amendments to the SSUTA, but not on other states compliance with the SSUTA.

Rationale: Georgia has been aware of some of these issues for several years. With respect to the good faith issue, that change was made by their legislature after they were approved as an SST full member state knowing it could take them out of compliance with the SSUTA. In addition, imposing the good faith requirement leads to a potential liability for every seller that accepts exemption certificates and potentially places a significant burden on them.

With respect to the SER issue related to the vendor compensation, Georgia could actually accept the SERs, but it would result in the sellers receiving less vendor compensation than they are entitled to under Georgia's law. For some of the other SER issues, due to the schema limitations, the SER would not provide them with the detail they need to properly distribute these taxes. The Certification Committee worked to address these issues and amendments to Sections 302 and 308 of the SSUTA were made to allow for alternate rate and boundary file layouts that would rectify this issue. This would require Georgia to revise its rate and boundary databases.

With respect to the caps and thresholds issue, Streamlined personnel and the Business Advisory Council have offered to work with Georgia to help them draft language to correct this issue and still accomplish the goal and intent of these provisions.

With respect to the State and Local Tax Rates issue, according to Georgia personnel, this is an issue that would require a statutory change.

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Table 1 below details what sanctions would be imposed if none or some of these compliance issues are resolved.

Table 1

Compliance Issue	Sanction Recommended
Good faith, SER issue, cap and threshold and local food exemption issues all unresolved	Not allowed to vote on SSUTA amendments and not allowed to vote on other state's compliance
Only good faith issue unresolved	Not allowed to vote on SSUTA amendments and not allowed to vote on other state's compliance
Only SER issue, cap and threshold and local food exemption issues unresolved	Not allowed to vote on other state's compliance

Nevada

Based on the above information and in accordance with Section 809 of the SSUTA and SSTGB Rule 809, the Executive Committee met and recommends the following sanctions:

The Executive Committee recommends that due to Nevada's sales tax holiday compliance issue, two levels of sanctions continue to be imposed. The first level which the Executive Committee recommends be effective upon approval by the Governing Board is to continue the current sanction that Nevada not be allowed to vote on other state's compliance. If Nevada does not correct the issue during its legislative session in 2023, a second level of sanctions would be imposed that would also not allow Nevada to vote on amendments to the SSUTA until this compliance issue is corrected.

Rationale:

Although this compliance issue for Nevada existed last year, their legislature only meets every other year (in odd numbered years). This issue is also the result of legislation that was brought forward and voted on by the State Legislature very quickly near the end of Nevada's last legislative session. This did not allow for adequate time to review the legislation and make revisions to ensure compliance with the SSUTA. It is important for states to have a process in place to verify that legislative action will not put them out of compliance with the SSUTA and therefore the Executive Committee is recommending two levels of sanctions – one that is effective upon the Governing Board approving this recommendation and a second

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that gives Nevada time to correct the issue and come back into compliance and would only become effective if the issue is not corrected in its 2023 legislative session.

Update as of May 22, 2023 – Nevada Senate Bill 50, as amended, was passed by the Nevada Legislature and signed by the Governor on May 17, 2023. This bill resolves Nevada’s compliance issue and therefore no sanctions are being recommended.
