SSTGB EXECUTIVE COMMITTEE
2021 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 2020. 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 initally 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

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 26, 2021 – No known change from above.

Kentucky

Kentucky was voted to not be in substantial compliance with the SSUTA in October 2020. The compliance issue that was raised had not been raised in previous years. Below is a brief description of the compliance issue

1. **Requires Separate Returns from Marketplace Facilitators to Report Direct Sales and Facilitated Sales (Section 318 of the SSUTA) –** Kentucky enacted a law that required marketplace facilitators to file separate returns. One return is filed to report its own direct sales. A second return is filed to report the sales it facilitated on behalf of marketplace sellers. Section 318 of the SSUTA prohibits states from requiring more than one tax return form each seller for each reporting period.

   Status as of March 26, 2021 – The legislative change needed to correct this compliance issue has passed in Kentucky and the compliance issue has been resolved.

Executive Committee Sanctions Recommendations

Georgia

Based on the above and in accordance with Section 809 of the SSUTA and SSTGB Rule 809, the Executive Committee met and recommended 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 has been working to address these issues and suggestions have been made to Georgia that could provide the detail they need to distribute these taxes properly.

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. The Certification Committee has been looking at ways to address this issue so the SER could still be filed and these taxes be properly distributed.

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

Kentucky

No sanctions are being recommended for Kentucky.

Rationale: Although the Governing Board found Kentucky to not be in compliance with the requirements of the SSUTA in October of 2020 because it required more than one return from marketplace facilitators to separately report their direct sales from their facilitated sales, the legislative change required to correct this issue has been adopted. Therefore no sanctions are being recommended.