

Nonmember State Participation in Streamlined

The Streamlined Sales Tax Governing Board (Governing Board) and the Streamlined Sales Tax Business Advisory Council (BAC) encourage states that are not members of the Streamlined Sales Tax Governing Board to simplify and modernize their sales and use tax systems to remove “undue burdens” on remote sellers, in view of the United States Supreme Court’s decisions in *Quill v. North Dakota (1992)* and *South Dakota v. Wayfair (2018)*.

While the *Wayfair* decision reversed the “physical presence” requirement contained in the *Quill* decision, it did not address whether or not South Dakota’s laws imposed an “undue burden on interstate commerce” as discussed in the *Quill* decision. The opinion issued in *Wayfair* did, however, identify three features in South Dakota’s law that it indicated “...appear designed to prevent discrimination against or undue burdens upon interstate commerce...” The features identified by the Supreme Court are:

- Small business protection or threshold;
- Not applying the law retroactively; and
- South Dakota’s membership in Streamlined which “...standardizes taxes to reduce administrative and compliance costs...”

While most nonmember states have taken specific action to address the first two features the Supreme Court identified (small seller threshold and no retroactive application), they have not done anything to standardize taxes to reduce administrative and compliance costs to help remove the undue burdens.

In an effort to assist nonmember states in addressing the third feature identified by the Supreme Court in *Wayfair* (removing the undue burdens on remote sellers) and increasing uniformity amongst the states, the Governing Board invites nonmember states to participate with the Governing Board member states in several of the areas the Governing Board has developed that substantially remove the undue burdens on remote sellers. This includes participation in:

- The Streamlined Sales Tax Registration System;
- The certification and ongoing testing process related to the certified service provider systems through Streamlined’s Testing Central;
- The rate and jurisdiction database posting, updating and distribution process through Streamlined’s Testing Central;
- The taxability matrix posting, updating and distribution process through Streamlined’s Testing Central;
- The contracts the Governing Board has with the Streamlined certified service providers (CSPs);
- The contract compliance audits the Governing Board’s Audit Core Team conducts on the certified service providers;
- The ongoing recertification of the current CSPs;
- The certification process for new CSPs;
- The Streamlined Sales Tax State and Local Advisory Council, Audit Committee and Certification Committee; and
- Provide input into and vote on the Governing Board’s budget.

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Nonmember states that are eligible to participate in these areas are those states that enact legislation that clearly indicates the state will:

- 1) Allow sellers to use the Streamlined Sales Tax Registration System without imposing any registration fees on those users;
- 2) Develop and post the rate and jurisdiction databases in the uniform format approved by the Governing Board and abide by the rules related thereto;
- 3) Complete and post the Streamlined Taxability Matrix clearly noting any differences between the state's definitions and those noted on the Streamlined Taxability Matrix;
- 4) Participate in the contracts the Governing Board has with the Streamlined certified service providers, including providing compensation for CSP services as defined in the contract (Note: Depending on the additional complexities of the specific state's laws that do not follow the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA), the nonmember state may be required to provide a higher level of compensation to the CSPs);
- 5) Provide liability relief for any errors in the rate and jurisdiction database or taxability matrix as required under the SSUTA to CSPs and sellers that rely on that information; and
- 6) Agree to pay the annual membership dues as computed for member states.

Once the state has enacted the legislation and completed the above requirements, the state will petition for participation by notifying the Executive Director and making the initial membership deposit required of Associate members as provided in the Streamlined Sales Tax Governing Board's Rules and Procedures. The Executive Director will place the discussion of the state's participation as outlined above on the next Governing Board agenda for its approval. Once approved, the state's participation will be effective on the first day of the month mutually agreed upon between the state and the Governing Board. While participating states are not obligated to become full members under the SSUTA, the Governing Board strongly encourages any participating nonmember state to eventually become a full member to further reduce the tax compliance burden on sellers and take advantage of the many benefits of membership in Streamlined, including the ability to audit numerous remote sellers through a single CSP.

For further information or to discuss your state's participation, please contact Craig Johnson, Executive Director, Streamlined Sales Tax Governing Board by email at craig.johnson@sstgb.org or by phone at (608) 634-6160.