

COST 2010 Sales Tax Conference & Audit Session

Streamlined Sales & Use Tax Project – Will the States Adopt Uniform Sourcing Rules for Services, Agree to Compensate Sellers and Adequately Govern Their Compliance with the SSUTA?”

Presented By: Carolynn S. lafrate
Fred Nicely
Maureen Riehl

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Agenda

- ▶ Uniform Sourcing Rule for Services
- ▶ Compensation of Sellers
- ▶ Compliance Issues

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Uniform Sourcing Rule for Services

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SSUTA Section 310

1. Over the counter sales are sourced to the business location of the seller where the sale occurs.
2. If not over the counter sale, sale is sourced to location where receipt occurs (which can be multiple locations).
3. When (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the Purchaser that is available from the business records of the Seller that are maintained in the ordinary course of business when use of this address does not constitute bad faith.
4. When (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the Purchaser obtained during the consummation of the sale, including the address of a Purchaser's payment instrument, if no other address is available, when this address does not constitute bad faith.
5. When none of the previous rules apply, then the location is determined by the address from which the prewritten software was shipped or, if delivered electronically, was first available for transmission by the Seller.

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SSUTA Section 311

► **For purposes of Section 310 and the taxation of services, the terms *receive* and *receipt* mean:**

- Making first use of services

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SSUTA Sourcing of Services

► **Considerations**

- How did we get here?
 - Subparagraph (c)(1)(7) of origin sourcing alternative
- What services are currently taxed by SST states?
- Categorization of services:
 - Services to TPP
 - Services related to TPP
 - Other services

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Proposed Regime

► **Rule 311.1 – Receipt of Services Generally**

- Overview
 - Follow the sourcing regime of Section 310
- Defines where receipt occurs
 - The location where the purchaser can make first use of the service

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Proposed Regime

► **Rule 311.2**

- Services to TPP
 - Applicable where service provider is performing a service to TPP belonging to the purchaser
- Examples include:
 - Repair, calibration and maintenance
 - Painting or refinishing
 - Washing or cleaning
 - Animal care

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Proposed Regime

► **Rule 311.3**

- Services with respect to TPP
 - Proposed break out due to discussion related to monitoring services
 - What facts are known by the seller
- Examples include:
 - Testing or inspecting
 - Appraisals
 - Monitoring
- First Use of Service
 - In the case of a service where the primary result of the service is a report, the sale is sourced to where the purchaser receives and can make first use of the report

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Proposed Regime

► **Issues**

- Examples are too simple and straight forward
 - Focus has been principally on B2C transactions
 - Examples do not cover multi-state contracts
 - Examples do not cover remote services, with one exception, which is receiving a significant amount of debate
 - Examples do not contemplate reports received in digital form

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Compensation of Sellers

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Compensation of Sellers

► **Why is Vendor Compensation Needed?**

- Always part of the bargain for business cooperation with the early SSTP
- Compensation eliminates the need for or offsets a higher small seller exception
- Recognizes sellers as “tax collection agents” and puts sellers in similar cost-offset position to states who collect on behalf of locals
- Treats all sellers the same – Level Playing Field
- Creates incentive for the SSTGB to continue pursuit of simplified/cost-free system

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Compensation of Sellers

► Background on Compensation:

- Since 1999, whatever costs were not removed, states agreed to pay – postpone until after progress of SSTP
- Vendor Compensation not seriously addressed until June 2008
- JCCS (2006) used as baseline – states balk at results
- Hurdles:
 - Apply to all sellers? (remote and nexus sellers)
 - How much detail – and where is it?
 - Timing, Caps, Size of State, Size of Retailer

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Compensation of Sellers

► Resolved Compensation Issues:

- CSP model compensated according to contract
- A requirement in federal bill; details in Agreement Applies to all sellers *

► Outstanding Issues:

- What is "reasonable compensation?"
- Timing, Caps, Size of State and Sellers
- How much \$ cost states; how much \$ sellers get
- Firm commitment from SSTGB

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Compensation of Sellers

► Where is Vendor Compensation Today?

- 3-4 proposals considered for federal bill since April 2008
- State budgets problems complicate negotiations
- More important to business than ever before, as it has a direct impact on:
 - Small Seller Issue
 - Governance Issues
 - Trust in the SSTGB
 - Promise of more simplifications

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Compliance Issues

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Compliance Issues

► **States' Compliance Issues**

- The GB does not want to lose member states
 - Impacts their momentum towards federal legislation
- Compliance reviews are performed by other states, who are not familiar with laws in other states, but only their own state's laws
- Subjective determination of what is "substantial compliance"
 - Substantial compliance with each requirement of the Agreement
 - What is "material" for substantial compliance

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Compliance Issues

► **General Issues in Conducting Compliance Reviews**

- No reliable standard – Compliance checklist leaves too much room for error
- In essence, States are policing themselves
- Business community has limited resources – business cannot conduct extensive compliance reviews
 - Issues are now being identified on a issue by issue basis based on businesses currently encountering problems in each state (reactive rather than proactive)
 - States are resistant to making changes –
 - Claim lack of funds or
 - State does not feel compliance issue is "material" or
 - State's legislators don't want to constantly address SSUTA issues

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Compliance Issues

► **States in Which Problems Have Been Identified**

- Indiana
 - Sellers' relief for taxability matrix or rate errors and lacking certain definitions
- Iowa
 - Sales price (bundling) and telecommunication definitions
- Kentucky
 - Sourcing of digital goods
- New Jersey
 - Replacement fur tax
- Nevada
 - Current ACH Credit issue – prior issues with exemption certificates
- Tennessee
 - Continuous delays, unknown compliance

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Compliance Issues

► **Changes to Annual Compliance Rule, Rule 905 (renumbered to Rule 803)**

- Review Timeline
 - States must file recertification document by August 1st each year stating whether or not they are compliant with the Agreement as of that date
 - Must list law and regulatory changes since prior year to remain in compliance, include updated taxability matrix, disclose any compliance issues and actions to remedy, and list any administrative or judicial decisions that impact compliance
 - CRIC receives SSUTA GB Staff report by Sept. 30th and starts 30 day public notice period for the states and the public to comment
 - Additional 10 day period provided for states and public to comment to public comments during the 30 day period
 - CRIC to complete review process and issue its report by Nov. 30th to give GB chance to vote on compliance before the year ends

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Compliance Issues

► **Changes to Annual Compliance Rule, Rule 905 (renumbered to Rule 803)**

- Review Procedures
 - Each state presumed to be in compliance, however, if documentation by CRIC or the public indicates a state is not in compliance, that state has an affirmative duty to explain how it is in compliance
 - No affirmative duty to respond if compliance issue against the state was previously not found to be a compliance issue by the Governing Board; however, CRIC and the Governing Board must still consider documentation to determine if there is a compliance issue
 - A state cannot make verbal statements that it will comply with the Agreement, it must have legislation, a regulation, or a written policy (posted on its website)
 - Prior rule only allowed the Governing Board to vote on a state's compliance if CRIC found the state out of compliance – rule amended to now allow a state not found out of compliance by CRIC to be subject to a compliance vote by motion (the BAC can make such a motion)

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Compliance Issues

► **Compliance Issues Related to Uniformity/Simplification**

- BAC trying to achieve more uniformity and simplification
 - Direct pay – expand provision to all member states
 - Advance payments – only allow one payment that must reflect reasonable estimate of tax owed up to adv. payment date
 - Provide set date amendments to the Agreement must be filed
 - Provide uniform treatment for extending due dates for filing returns, making payments, etc. when such a date falls on a federal holiday or a weekend
 - Amend bylaws to address “excessive absence” by a committee members, not allow a committee members to give their proxies to vote to others, increase legislators participation
 - Require states post SSUTA exemption certificate and keep it current
 - Refund periods – same as normal period to assess additional tax
 - Net tax due on audits for determining penalties and interest
 - Sanctions rule for states found out of compliance
 - Clarify tax administered at state level (not state and local)

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Questions?

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Contact Information

- **Carolynn S. lafrate**
csiafrate@industrysalestax.com (610) 458-7227

- **Fred Nicely**
fnicely@cost.org (202) 484-5213

- **Maureen Riehl**
riehlm@nrf.org (202) 626-8121

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DRAFT SOURING RULES

Rule 311.1 – Receipt of Services Generally.

A. Except as otherwise provided in the Streamlined Sales and Use Tax Agreement, sellers of services are to source the sales of those services under the general destination sourcing regime of section 310A of the Agreement. Section 310A.1 provides that in cases where the service is received by the purchaser at a location of the seller, the seller is to source the service to that location under section 310A.1 of the Agreement. If the purchaser receives the service at any other location, and that location is known to the seller, the sale of the service is sourced to that location. If the location of receipt by the purchaser is unknown to the seller of the service, the seller should source the service according to the provisions of section 310A.3, 4 or 5 of the Agreement as appropriate.

B. In determining whether to apply the provisions of sections 310A.1 and 310A.2 to a sale of a service, it is necessary to determine the location where the service is “received” by the purchaser. Section 311B of the Agreement defines “receive” and “receipt” with regard to sales of services as, “Making first use of services.” For purposes of applying this definition, the location (or locations) where the purchaser can first make use of the result of the service is the location (or locations) of the “receipt” of the service. The location where the seller performs the service is not determinative of the location where the purchaser “receives” the service.

C. This rule and subsequent rules in the 311. sequence, clarify the application of the definition of “receive” or “receipt” to various categories of services to assist sellers of services in applying the sourcing provisions of sections 310A.1 and 310A.2 to those services. The provisions of these rules do not affect the obligations of a purchaser or lessee to remit tax on the use of the service to the tax jurisdiction of that use.

Rule 311.2 – Receipt of Services To or With Respect to Tangible Personal Property

A. 1. A transaction where a service provider is performing a service on tangible personal property belonging to the purchaser of the service is a “service to tangible personal property. In the case of a service to tangible personal property, some activity is performed on the property to change some aspect of the property, such as its appearance or function and the serviced property is then returned to the purchaser of the service.

2. Examples of services to tangible personal property include, but are not limited to:

- a. Repair, calibration or maintenance of tangible personal property;
- b. Painting or refinishing tangible personal property, including motor vehicle painting or detailing;
- c. Washing or cleaning tangible personal property, including laundry or dry cleaning services, and motor vehicle washing services;
- d. Animal care, including veterinary services and animal grooming services.

B. Except as otherwise provided in the Streamlined Sales and Use Tax Agreement or the rules adopted by the Governing Board, a service to tangible personal property is received, within the meaning of section 311B of the Agreement, at the location where the customer can make first use of the tangible personal property on which the seller performed the service. For practical purposes, this should be the same location where, if the transaction were a sale of the tangible personal property involved, the purchaser received the property.

C. The following examples illustrate the proper determination of the location of “receipt” for services to tangible personal property.

1. Repair or maintenance of tangible personal property

- a. A resident of State A takes his lawnmower to a repair shop in State B to have the engine serviced and the blades sharpened. When the lawnmower is ready, the owner picks it up at the repair shop. The repair service is received at the repair shop location in State B since the owner first has possession of the repaired item there and at that point can make use of the lawnmower. The shop owner should source the repair transaction to State B under the provisions of Section 310.A.1 of the Agreement.
- b. Same facts as in Example C.1.a above except that the repair shop delivers the repaired lawnmower to the owner’s residence in State A. In this case, the owner receives the service at the location where the lawnmower is delivered since that is the point at which he can first make use of the lawnmower. The repair shop owner should source this repair transaction to State A according to the provisions of Section 310.A.2 of the Agreement.

c. A resident of County Z needs her clothes dryer repaired. She contacts an appliance repair service located in County Y. The repair service sends a technician to her home to make the needed repairs. The owner receives the repair service at her home in County Z since the repaired dryer is first available for use at that location. The repair service company would source this transaction to County Z under the provisions of Section 310.A.2 of the Agreement.

d. A manufacturer in State A uses gauges in its production process to assure its product meets specifications. Periodically, the manufacturer ships the gauges to a laboratory in State B to verify that they are producing proper measurements. The laboratory tests the gauges and, if necessary, adjusts the calibration on the gauges. The gauges are then shipped back to the manufacturer's location in State A. The manufacturer makes first use of the testing service at the location where it receives and can first make use of the tested and recalibrated gauges. The laboratory should source the transaction to the location of the manufacturer in State A according to the provisions of Section 310.A.2 of the Agreement. If, on the other hand, the manufacturer picks up the calibrated gauges from the testing laboratory in State B, the laboratory should source the transaction to its business location in State B according to the provisions of Section 310.A.1.

2. Painting or refinishing tangible personal property.

a. A law office in County Y has some antique bookcases it wishes to have refinished. The bookcases are picked up by a refinisher and taken to his shop in County Z. The refinished bookcases are then delivered to the law office. The refinishing service is received by the law office where it has first use of the refinished bookcases. The refinisher should source the transaction to the location of the law office in County Y according to the provisions of Section 310.A.2 of the Agreement. If, instead, the law office sends one of its employees to the refinisher to pick up the refinished bookcases, the refinisher would source the sale to its business location in County Z according to the provisions of Section 310.A.1 of the Agreement.

b. A business hires a painter to paint several file cabinets. The painter does the painting on site at the purchaser's office location. The purchaser makes first use of the service at its office where it obtains first use of the painted file cabinets. The painter should source the transaction to the purchaser's office location according to the provisions of Section 310.A.2 of the Agreement.

3. Cleaning tangible personal property.

a. An individual takes laundry to a dry cleaner's store. After the clothing is cleaned, the purchaser returns to the dry cleaner to pick up the clothing. The purchaser makes first use of the dry cleaning service at the dry cleaner's store where the purchaser receives the cleaned clothes. The dry cleaner should source the transaction to the location of the store according to the provisions of Section 310.A.1 of the Agreement.

b. An automobile is delivered to a car wash. The car wash operator cleans the automobile while the owner waits at the facility. When the automobile is cleaned, it is returned to the owner. The purchaser makes first use of the car washing service when he receives the cleaned automobile at the car wash. The car wash operator should source the transaction to the location of the car wash according to the provisions of Section 310.A.1 of the Agreement.

4. Animal care services.

a. A farmer in State A hires a veterinarian located in State B to inoculate the farmer's cattle. The veterinarian performs the inoculations at the farm in State A. The farmer makes first use of the service at the location where the cattle are inoculated in State A. The veterinarian should source the transaction to the farmer's location in State A according to the provisions of Section 310.A.2 of the Agreement.

b. A pet owner in County Y takes his pet to a veterinarian in County Z for treatment. The treatment is performed at the veterinarian's office in County Z. The owner receives the treated pet at the veterinarian's office. The veterinarian should source the sale to County Z according to the provisions of Section 310.A.1 of the Agreement.

c. Same facts as in example C.6.b above except that the veterinarian has an employee deliver the treated pet to the owner at the owner's home. In this case, the owner receives the treated pet at his home in County Y. The veterinarian should source the transaction to County Y according to the provisions of Section 310.A.2 of the Agreement.

d. A pet owner hires a mobile pet washing service to come to his home in County Y and bathe his dog. After being bathed and groomed the dog is returned to the owner at his home. The service is received where the bathed and groomed dog is returned to the owner. The pet washing service should source the transaction to the pet owner's home in County Y according to the provisions of Section 310.A.2 of the Agreement.

Rule 311.3 – Receipt of Services With Respect to Tangible Personal Property

A. 1. A transaction where a service provider is performing a service related to tangible personal property belonging to the purchaser of the service is a “service with respect to tangible personal property.” In the case of a service with respect to tangible personal property, some aspect of the tangible personal property is being evaluated or monitored to ascertain its quality, value, or proper function.

2. Examples of services with respect to tangible personal property include, but are not limited to:

- a. Testing or inspection, of tangible personal property;
- b. Appraisal of tangible personal property;
- c. Monitoring of tangible personal property.

B. Except as otherwise provided in the Streamlined Sales and Use Tax Agreement or the rules adopted by the Governing Board, a service with respect to tangible personal property is received, within the meaning of section 311B of the Agreement, at the location where the result of the service is received. If the primary result of a service with respect to property is the preparation and delivery of a report, the service is received at the location where the purchaser receives and can make first use of the information contained in the report. If the primary result of the service is not a report, the service is received at the location of the property with respect to which the service is performed.

C. The following examples illustrate the proper determination of the location of “receipt” for services with respect to tangible personal property.

1, Testing or inspection of tangible personal property.

a. A manufacturer periodically sends samples of the product produced at its plant in State A to a laboratory for testing. The testing process destroys the sample in order to determine certain properties of the product. The laboratory sends a report on the results of the testing to the manufacturer’s office in State B and disposes of any remains of the product. The manufacturer receives the testing service at its office where it receives the laboratory report and can make first use of the results of the testing service. The laboratory should source the transaction to the location of the manufacturer’s office in State B according to the provisions of Section 310.A.2 of the Agreement.

b. A food product manufacturer located in State A hires a testing lab located in State B to test the grain the manufacturer uses in making its product. An employee of the testing services goes to the manufacturer’s location, gathers grain samples and takes them back to the lab for analysis. A report is then written and mailed to the manufacturer’s business address in State A. The manufacturer receives the service where it receives the report. The testing lab should source the transaction to the manufacturer’s location in

State A where the report was mailed, according to the provisions of Section 310.A.2 of the Agreement.

c. Same facts as in example D.1.b. above except the report is emailed to the customer. In this case, the manufacturer receives the emailed report at its headquarters location in State B. If the seller knows the location where the emailed report is received, the sale should be sourced to that location pursuant to Section 310.A.2 of the Agreement. If the seller does not know the location where the emailed report is received, the seller should source the sale under the applicable provisions of section 310A.3, A.4, or A.5 of the Agreement

2. Appraisal of tangible personal property.

a. A resident in county Y takes several items of jewelry to an appraiser in County Z. When the appraisal is completed, the purchaser picks up the jewelry and the appraisal report at the appraiser's office. The purchaser makes first use of the service at the appraiser's office where the appraised jewelry and appraisal report are received by the purchaser and the purchaser can make first use of the service. The appraiser should source the transaction to County Z according to the provisions of Section 310.A.1 of the Agreement.

b. An appraiser performs an appraisal of antique furniture owned by the purchaser at a storage facility in County Y where the customer keeps it. The appraiser returns to his office and completes the appraisal report. The appraiser subsequently mails the appraisal report according to instructions received from the purchaser to an address in County Z. The purchaser receives the service at the address in County Z where the appraisal report is delivered to the purchaser and the purchaser can make first use of the appraisal service. The appraiser should source that transaction to County Z according to the provisions of Section 310.A.2 of the Agreement.

3. Monitoring of tangible personal property.

a. A service provider is engaged by a large multi-state customer to remotely monitor its equipment located in all fifty states from the service provider's monitoring center located in State A. The customer has engaged the service provider to perform remote monitoring service of its equipment to ensure the customer's equipment is properly working and to notify the customer if the equipment is not working correctly. The service provider will call third party vendors on behalf of the customer to take corrective action for equipment that is not working correctly. The multi-state customer is required to provide the service provider the full street address location of the equipment that is being monitored. The contract states that a single charge will be billed for this monitoring service. The multi-state customer makes first use of the service simultaneously at each location of the equipment being monitored. The service provider should use a consistent reasonable method to allocate the single charge among the various taxing jurisdictions where the equipment being monitored is located. The appropriate state and local taxes should be calculated for and sourced to each location according to the provisions of Section

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310.A.2.of the Agreement. The sale is sourced to state A, only to the extent the customer has equipment in state A that is to be monitored by seller. The location of seller's monitoring center is not relevant in determining how to source the sale.

b. Same facts as in Example C.7.a above except that the seller has multiple monitoring centers. The sale should be sourced the same as in the example above. The locations of the seller's monitoring centers are not relevant.

COMPLIANCE ISSUES

To: Delegate John Doyle, President
Streamlined Sales Tax Governing Board

From: Myles Vosberg, Chairman
Compliance Review and Interpretations Committee

Subject: 2009 Compliance Review

Pursuant to Rule 905 of the Streamlined Sales and Use Tax Governing Board rules, the Compliance Review and Interpretations Committee (CRIC) completed its annual recertification review of member states. CRIC with assistance from Governing Board staff reviewed member states' compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) following each state's submission of an updated certificate of compliance and taxability matrix. Emphasis was placed on reviewing items that states were required to enact since the 2008 compliance reviews or since the subsequent entry of new states. In addition, the Governing Board staff selected Kentucky for a detailed review of compliance with every section of the Agreement.

Governing Board staff made an initial review of the certificates of compliance and identified possible areas of noncompliance with the Agreement. CRIC created a thirty day comment period for states and the public to comment on the issues identified or to submit new items of concern. All written comments submitted are attached as part of this report. Member states were given an additional 15 days to respond to public comment. During a series of teleconference meetings, CRIC discussed the outstanding issues and took a public vote on whether each state was or was not out-of-compliance pursuant to Section 805 of the Agreement. Before each vote, the member state under review and the public were given the opportunity to comment.

During the review process, five issues came up in more than one state. Because they were either new or there was disagreement on how to apply the issues they need to be discussed by all the member states before CRIC can consider them when determining a state's compliance with the Agreement. These issues include:

1. Does an exemption for regulatory fees, surcharges and taxes imposed on the seller conflict with the Agreement's definition of "sales price"? This issue was referred to the State and Local Advisory Council (SLAC) by the Governing Board in September, 2009.

2. Does an exemption for one-way paging conflict with the Agreement's definition of "paging"? This issue was referred to SLAC by the Governing Board in September, 2009.

3. 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 in September, 2009.

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4. If a state has an exemption certificate that requests information not included in the Streamlined exemption certificate may that state not provide liability relief if a seller only collects the information required on the Streamlined exemption certificate? This issue has not been referred to SLAC.

5. Is a state required to have in law the liability relief required in Section 304, or is it only necessary that a state provide the liability relief if they change their tax rate without providing at least 30 days notice as required in Section 304? This provision is in effect, but no state can be sanctioned until January 1, 2011 as provided in Section 809. Most states have not enacted this into law.

The remainder of this report is a summary of the action taken for each member state. Because of their special associate state status, Ohio and Utah were not required to submit a revised certificate of compliance and are not included in the review. A pending second vote in December 2009 on an amendment addressing the types of membership in the Agreement impacts Tennessee. Because that amendment has not been adopted, Tennessee is not included in this review. The following summary includes the potential issues of non-compliance that were raised and if a finding of non-compliance was made, the item or items that resulted in that finding.

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 and the members of the public that provided input.

State Action:

Arkansas

Finding: Not out-of-compliance

Vote: 4-0; Peters, VanDevender, Vosberg, and Wilkie

Issues Raised:

None

Indiana

Finding: Out-of-compliance

Vote: 4-0; Atchley, Peters, Vosberg and Wilkie

Issues Raised:

- No provision relieving sellers and CSPs from liability for errors in the taxability matrix.
- Tax imposed under a bracket system.
- The taxability matrix indicates that “telecommunications nonrecurring charges” are exempt and services necessary to complete the sale are taxable. However, the statute does not specifically define or exempt “telecommunications nonrecurring charges.”

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- The statutes do not define “digital codes” and do not provide a rule for their treatment. “Dietary supplements” are excluded from the exemption for “food and food ingredients” but are not excluded from the definition of “food or food ingredients.”
- The taxability matrix indicates that “mobility enhancing equipment” is exempt but the statute does not list it in the medical equipment and supplies exemption.

Basis of Finding:

The committee found that Indiana was not substantially in compliance with each requirement of the Agreement because of the issues above.

Indiana Response:

Indiana has drafted legislation which addresses all of these issues. The legislation will be introduced in the 2010 legislative session.

Iowa

Finding: Out-of-compliance

Vote: 6-0; Atchley, Mastin, Peters, VanDevender, Vosberg, and Wilkie

Issues Raised:

- The provisions for bundling are included in the state’s definition of “sales price”. (Carry over from 2008 review.)
- The Business Advisory Council (BAC) raised the issue of the state’s provisions for sourcing of services based on where the services are performed given that Iowa is a destination sourcing state.

Basis of Finding:

The committee found that Iowa was not substantially in compliance with each requirement of the Agreement since the sales price definition was not in conformity with the Agreement. The committee did not consider the sourcing of services issue as it is being addressed by SLAC as they develop a rule for sourcing services.

Iowa Response:

Iowa has drafted legislation to address the “sales price” issue. The legislation will be introduced during the 2010 legislative session

Kansas

Finding: Not out-of-compliance

Vote: 6-0; Atchley, Mastin, Vosberg, Kenley, Peters and Wicks

Issue Raised:

The BAC raised an issue relating to exemption certificates on whether the additional information requested on the state form is required and whether the Streamlined exemption certificate is sufficient to document an exemption.

Basis of Finding:

The committee found that Kansas was not substantially out-of-compliance with any requirement of the Agreement after the state clarified that the additional information requested on the state exemption form is voluntary and that the use of the Streamlined form has been accepted for use in the state. Kansas also changed its Publication KS - 1520 to include this information.

Kentucky

Finding: Not out-of-compliance

Vote: 6-0, Atchley, Mastin, Vosberg; Kenley, Peters, and Wicks

Issues Raised:

- Digital goods are sourced to place of primary use.
- The provision for when a cause of action against a seller accrues does not specify that the notification to the seller has to be in writing.
- The state exempts “rate increases” for school tax and any other taxes and surcharges imposed on the provider relating to telecommunications service.
- The BAC questioned whether using the state exemption certificate satisfies the good faith requirement in the statutes and if the additional information requested on the form is required.
- The BAC indicated that the 120 day period for providing a certificate or information substantiating an exemption was not in the statutes or rules.

Basis of Finding:

The committee found that Kentucky was substantially not out-of-compliance with any requirement of the Agreement after the state clarified that Section 310 was used in sourcing digital goods and that the state allows longer than the 120 day period allowed by the Agreement. The state agreed to put these positions in writing. The issues of sourcing digital products to place of primary use when the product is not downloaded, the exemption for “rate increases” for school tax and other taxes and surcharges and whether additional information requested on the state exemption certificate is required were not considered.

Michigan

Finding: Not out-of-compliance

Vote: 5-0; Atchley, Peters, VanDevender, Wilkie and Vosberg

Issues Raised:

- The statute for taxing interstate telecommunications excludes one-way paging service. “Paging service” as defined by the Agreement includes both one-way and two-way paging service.
- The bundling definition and rules only apply to transactions including telecommunications services, ancillary services, Internet access or audio or visual programming services.
- The state does not have a provision allowing sellers and CSPs 10 days to correct errors as provided in section 502E of the Agreement.

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Basis of Finding:

The committee found that Michigan was not substantially out-of-compliance with any requirement of the Agreement since legislation addressing the 10 day rule has passed and been signed into law. The committee did not address the one-way paging issue as that issue has been referred to SLAC. The state explained that there isn't an issue with bundling because they have long followed a Michigan Supreme Court ruling which treats mixed transactions that meet the bundling definition in the same manner as the Agreement. To clarify the treatment of such transactions, the state will put this in writing and promulgate a rule.

Minnesota

Finding: Not out-of-compliance

Vote: 4-0; Atchley, Peters, VanDevender and Vosberg

Issue Raised:

- The taxability matrix indicates that "digital audio works" are not taxable, but that "ringtones" are. "Digital audio works" is a product definition that includes ringtones. The "specified digital goods" provisions are effective January 1, 2010.

Basis of Finding:

The committee found that Minnesota was not substantially out-of-compliance with any requirement of the Agreement. The committee noted that the state would not be in compliance with the Agreement on this issue effective January 1, 2010. However, for purposes of the 2009 review, the state was in compliance.

Minnesota Response:

Minnesota indicated that legislation will be introduced in the 2010 legislative session to address this issue.

Nebraska

Finding: Not out-of-compliance

Vote: 6-0; Atchley, Mastin, Peters, VanDevender, Vosberg, and Wilkie

Issues Raised:

- The rule for telecommunications services is out-of-date and uses terms not in the "Agreement." Also, the rule indicates that telecommunications taxes and surcharges which are normally imposed on the seller are exempt.
- The BAC raised an issue with respect to exemption certificate requirements. The state certificates require more information than what is required on the Streamlined certificate. The BAC also could not find anything that addressed the 90 and 120 day provisions with respect to obtaining exemption certificates or information.

Basis of Finding:

The committee found that the state was not substantially out-of-compliance with any requirement of the Agreement based on the state's responses to the issues. The state

indicated that the statute regarding telecommunications taxation was updated last session to use the terms “intrastate telecommunications service” and “ancillary service” as defined in the Agreement. The state indicated that taxes and surcharges on telecommunications services are imposed on the purchaser in Nebraska. The state does not require the additional information on the state exemption certificates and would accept certificates without it. The department indicated that it would amend the regulation to clarify this treatment. The department provided a citation for the rule covering the 90 and 120 day provisions.

Nevada

Finding: Not out-of-compliance

Vote: 5-0, Wilkie, Peters, VanDevender, Mastin, and Vosberg

Issues Raised:

- The state has not fully implemented ACH credit payments.
- Issues raised by BAC in its petition for resolution dated July 13, 2009 still existed although there was a rules hearing scheduled.

Basis of Finding:

The committee found the state was not substantially out-of-compliance with any requirement of the Agreement as the hearing on the proposed regulations covering the issues raised by BAC had been held and the regulations were adopted. Although the regulations would go to a legislative committee, the state indicated they would be approved. The regulations have been filed with the Secretary of State and are in effect. The state is working to implement ACH credit payments but has had budget issues that have delayed full implementation.

New Jersey

Finding: Not out-of-compliance

Vote: 6-0; Atchley, Mastin, Peters, VanDevender, Vosberg, and Wilkie

Issue Raised:

- The state taxes “digital products” which it defined as “electronically delivered music, ringtones, movies, books, audio and video works and similar products.” The “specified digital property” definitions are not used.

Basis of Finding:

The committee found that the state was not substantially out-of-compliance with any requirement of the Agreement based on the position that although the state only taxes items that would fall in the definitions of “specified digital property” they do not need to use those definitions since the state taxes products delivered electronically as allowed by section 332 of the Agreement.

North Carolina

Finding: Not out-of-compliance

Vote: 4-0, Wilkie, Vosberg, Peters, and VanDevender

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Issues Raised:

- The statute taxes prepaid telephone calling service which is defined to include “prepaid wireline calling service” and “prepaid wireless calling service.” There is no definition in the statute for “prepaid calling service” which the Agreement defines in such a manner that it includes both wireline and wireless service. There is no definition in the Agreement for “prepaid wireline calling service.”
- The statute exempts pay telephone service but does not define it. There is a definition in the Agreement.
- The statute cited for providing relief from liability from errors in the taxability matrix for sellers and CSPs (section 328) and purchasers (section 331) only relates to errors in information on rates, boundaries and taxing jurisdiction assignments.
- The BAC raised two issues related to exemption certificates: (1) the 90 and 120 day time periods for sellers to obtain exemption certificates are not in the statutes (but compliance with section 317 is referenced in the instructions to the state form), and (2) exemption certificates for over-the-counter sales are limited to sales of property typically sold by the type of business stated on the certificate.

Basis of Finding:

The committee found that the state was not out-of-compliance with any requirement of the Agreement based on the state’s responses to the issues. The state pointed out that prepaid services are sourced in accordance with the Agreement and that the statute will be amended in the 2010 session to delete the word “wireline.” The state pointed out that the Streamlined definition of pay telephone is in a technical bulletin. The state provided an administrative provision in the statute that provides relief from liability for errors caused by written advice or information provided by the state and stated this provision covers errors in the taxability matrix. The state indicated that exemption certificates are administered in accordance with the Agreement and that the statute would be amended in the 2010 session. The state issued a technical bulletin to clarify this treatment.

North Dakota

Finding: Not out-of-compliance

Vote: 5-0; Wicks, Atchley, Mastin, Peters, and Molnar

Issues Raised:

- It was noted during the last review that North Dakota omitted enacting a definition of prepaid calling services. The state confirmed that these services were being administered consistent with the Agreement under a different term and the rule on telecommunications services would be amended to include this item. The rule has not been amended.
- The state taxes communication service which is defined to include telecommunications service. Under the statute one-way communications services are not taxable. This means that one-way paging services are not taxable. The Agreement defines “paging service” which includes one-way and two-way paging.

Basis of Finding:

The committee found that North Dakota was not substantially out-of-compliance with any requirement of the Agreement after the state pointed out that “prepaid calling services” were defined in another chapter of the statutes. The state will send a letter that provides the information on that chapter and to substantiate that that chapter applies to sales and use taxes. The one-way communication service issue was not considered.

Oklahoma

Finding: Not out-of-compliance

Vote: 5-0; Wicks, Atchley, Vosberg, Kenley, and Peters

Issues Raised:

- There is no provision for sourcing of ancillary services.
- The rule for telecommunications services excludes from taxation “Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund”.

Basis of Finding:

The committee found that Oklahoma was not substantially out-of-compliance with any requirement of the Agreement as the state had passed an emergency rule to provide for sourcing of ancillary services. The issue of regulatory assessments and other charges being exempt was not considered.

Rhode Island

Finding: Not out-of-compliance

Vote: 6-0; Mastin, Wicks, Vosberg, Peters, Atchley, and Molnar

Issues Raised:

- Rules for the sourcing of ancillary services have not been promulgated. This was an issue during the last review.

Basis of Finding:

The committee found that Rhode Island was not substantially out-of-compliance with any requirement in the Agreement as the state has had hearings on the rule and it goes into effect on January 1, 2010. The state confirmed in writing that it would source these services consistent with the Agreement.

South Dakota

Finding: Not out-of-compliance

Vote: 5-0; Wicks, Atchley, Vosberg, Mastin, and Molnar

Issues Raised:

- When moving the telecommunications definitions from the rule to the statutes, the definition for conference bridging service was not included.

- The statutes require information on the exemption certificate that is not a required data element on the Streamlined exemption certificate.

Basis of Finding:

The committee found that South Dakota was not substantially out-of-compliance with any requirement of the Agreement as the state taxes all ancillary services and conference bridging is an ancillary service. The state said that while their statute required more data than is allowed on the Streamlined exemption certificate issue, the state's certificate does not request the additional information. There will be legislation to delete these requirements from the statute in the next session.

Vermont

Finding: Not out of compliance

Vote: 6-0, Peters, Atchley, Wilkie, Vosberg, VanDevender, and Mastin

Issues Raised:

- On the Certificate of Compliance, the response in section 310.1, Election for Origin-Based Sourcing still indicates "yes". The statute provides for destination sourcing.
- Under section 314, a regulation is cited for sourcing prepaid wireless calling service, but the current regulation does not address it. This was an issue last year and the state has indicated that a regulation is being promulgated.
- Under section 314, the regulation cited for sourcing ancillary services defines "receive" and "receipt". It does not address ancillary services. No other regulation sourcing ancillary services was identified.
- The regulation section cited for treatment of software maintenance contracts deals with bundles including telecommunications services, ancillary services, Internet access or audio or video programming services. The bundling regulations do not address software maintenance contracts.
- The definition in the statute of "delivery charges" includes the following: Direct mail charges that are separately stated on an invoice or similar billing document given to the purchaser are excluded from the definition of "delivery charges". The Taxability Matrix indicates direct mail delivery charges are taxable.

Basis of Finding:

The committee found that Vermont was not substantially out of compliance with any requirement of the Agreement based on the state's responses to the issues. The errors in the Certificate of Compliance (origin based sourcing) and taxability matrix have been corrected. Regulations dealing with the sourcing of prepaid wireless calling service and ancillary services and with treatment of software maintenance contracts are in the promulgation process and will be effective early next year. Notices have been posted to the state's website to clarify the sourcing of prepaid wireless calling service and ancillary services. Vermont indicated on its website that the sourcing of these services would be in accordance with the Agreement.

Washington

Finding: Not out of compliance

Vote: 6-0, Peters, Atchley, Wilkie, Vosberg, VanDevender, and Mastin

Issues Raised:

- The statute sourcing prepaid calling and prepaid wireless calling services only refers to prepaid calling service in the rules for receipt at the seller's place of business and for receipt at the location delivered to the customer.
- The BAC raised an issue regarding whether the state accepts the Streamlined exemption certificates in lieu of the new state reseller permit.
- Public comment submitted by Mr. Timothy Gillis asserts that the newly enacted exemption for pay-per-view service sold by providers who pay a franchise fee conflicts with Section 316C of the Agreement.

Basis of Finding:

The committee found that Washington was not substantially out of compliance with any requirement of the Agreement. Washington pointed out that the state sources prepaid wireless calling service in accordance with the Agreement and posted a special notice on its website providing information on the sourcing of prepaid wireless calling service. Legislation is being drafted to make this clear in the statutes. Washington made it clear that all sellers are allowed to accept the Streamlined certificate in lieu of reseller permits and that the state accepts either the data elements or the certificate. With respect to the exemption for pay-per-view sold by providers who pay a franchise fee, the exemption is an entity based exemption that complies with Section 316 C (3).

West Virginia

Finding: Not out of compliance

Vote: 6-0, Peters, Atchley, Wilkie, Vosberg, VanDevender, and Mastin

Issues Raised:

- Statutes providing relief from liability for sellers and CSPs relying on incorrect information on rates, boundaries and taxing jurisdiction assignments limits the relief to sellers and CSPs that are registered under the Agreement. This was an issue last year and the state indicated that the statute would be changed.
- The Certificate of Compliance cites the same section of the statute for relief from liability for relying on erroneous information in the taxability matrix. That section of the statute does not include the taxability matrix.
- Errors and omissions of statute/regulations were found on the Certificate of Compliance and Taxability Matrix. The Taxability Matrix also had errors relating to the taxation of prepaid calling service and prepaid wireless calling service.
- The statute does not define "delivered electronically." Instead it defines "delivered" using the definition in the Agreement for "delivered electronically."

Basis of Finding:

The committee found that West Virginia was not substantially out of compliance with any requirement of the Agreement. West Virginia posted administrative notices

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clarifying the relief from liability issues on its website. The Certificate of Compliance and Taxability Matrix have been corrected. The omission of “electronically” from the term “delivered electronically” will be remedied by a technical correction in legislation during the next legislative session.

Wisconsin

Finding: Not out-of-compliance

Vote: 5-0, Atchley, Peters, VanDevender, Vosberg, and Wilkie

Issues Raised:

- The BAC raised the issue that the state defined video games as a digital product when the BAC believes that video games are prewritten computer software.

Basis of Finding:

The committee found that Wisconsin is not substantially out-of-compliance with each requirement of the Agreement after the state explained that video games that meet the definition of “prewritten computer software” would be considered as such and that other video games would be considered digital products.

Wyoming

Finding: Not out of compliance

Vote: 6-0, Peters, Atchley, Wilkie, Vosberg, VanDevender, and Mastin

Issues Raised:

- There is no provision for sourcing of ancillary services.
- The statute cited for sourcing of prepaid wireless calling service only addresses prepaid calling service. There is no provision for sourcing prepaid wireless calling service.
- The taxability matrix shows delivery charges for transportation, shipping, postage and similar charges and for direct mail as not included in the definition of sales price. The definitions for sales price and delivery charges in the statutes include such items.
- The statute exempts the sale of the service of transmitting radio waves to a one-way paging unit.

Basis of Finding:

The committee found that Wyoming was not substantially out of compliance with any requirement of the Agreement because the state indicated that sourcing of ancillary services and prepaid wireless calling services is in accordance with the Agreement. Wyoming a posted policy statement clarifying the sourcing of these services to its website and is drafting legislation to clarify it in the statutes. The state pointed out that although the definition of “sales price” includes delivery charges, there is a specific exemption for transportation charges elsewhere in the statutes. The one-way paging issue was not considered

A motion by Kansas to amend the rules relating to compliance review:

Rule 905. Annual Recertification

A. **Recertification Requirement.** Pursuant to Section 803 of the Agreement, each member state shall annually recertify to the Governing Board by August 1 of each year that the state is in compliance with the Agreement. A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.

1. Recertification Documents

a. On or before August 1 of each year, each member state shall submit to the Executive Director either a statement certifying that the state is in compliance with the Agreement as it exists on August first of the year or a statement of noncompliance.

b. With the statement, each member state shall submit:

(1.) The certificate of compliance issued for the recertification period that sets out the state's statutes, rules, regulations, and other authorities adopted to comply with the specific provisions of the Agreement as of August first of the year;

(2.) A list and the effective date of any of the state's statutes, regulations, or written policies to remain or come into compliance that have changed since August first of the prior year;

(3.) Its most current taxability matrix;

(4.) A statement disclosing any known items of noncompliance with a description of the action the state intends to take to remedy the noncompliance; and

(5.) A list of any significant administrative or judicial decisions (regardless of outcome) that impact the state's compliance since August first of the prior year.

2. Posting Documents. Each member state shall post its statement of recertification or its statement of noncompliance and all supporting recertification documents on the state's web site on or before August first of each year. The Executive Director shall post all recertification filings on the Governing Board's web site.

B. **Review Responsibility.** Pursuant to Article 7, Section 2 of the bylaws, the Compliance Review and Interpretations Committee (CRIC) is responsible for reviewing each state's annual recertification filings, determining any needs for re-assessment and recommending to the Governing Board findings of non-compliance.

C. CRIC Evaluation and Report

1. On or before September 30 of the recertification year, the Executive Director shall:

a. Review all statements and accompanying documents;

b. Conduct a state-by-state review of each state's compliance with the Agreement; and

c. Issue an initial written report to CRIC listing potential compliance issues for each member state or stating there are no compliance issues. The Executive Director shall publish the initial written report on the Governing Board's web site

and CRIC shall hold at least one meeting to discuss the report and schedule dates for states and the public to submit comments.

2. Providing at least thirty days notice, CRIC shall give states and the public the opportunity to submit written comments to CRIC. Such responses and comments shall be delivered to the Executive Director who shall notify the public of their filing and publish those documents on the Governing Board's web site.

3. Providing at least ten days notice, CRIC shall give the states and the public the opportunity to submit written comments to CRIC solely to address any issues previously raised in CRIC's report or to address comments received from the states or the public. Such responses and comments shall be delivered to the Executive Director who shall notify the public of their filing and publish those documents on the Governing Board's web site.

4. On or before November 30 of the recertification year, CRIC shall issue its final report to the Governing Board. Such report shall:

a. Summarize, as practical, the comments received from the member states and the public;

b. Describe how CRIC addressed those comments; and

c. State how each CRIC member voted.

5. If any date provided in this rule falls on a weekend day, federal holiday or a banking holiday in a member state, such date shall be the next day that is not a weekend day, federal holiday or a banking holiday in a member state.

6. The CRIC chair, for due cause shown, may extend the September 30 or November 30 deadlines established in this section.

D. Review Standards

1. Scope of Review. The member states' annual recertification of compliance covers all aspects of the Agreement, including any applicable rules and interpretations, and is not limited to changes made in the prior year.

2. Determination of Compliance

a. A member state is presumed to be in compliance. Except as provided in subparagraph b of this paragraph, if documentation is provided to CRIC indicating a state is not in compliance, such state has an affirmative duty to explain how it is in compliance.

b. If an issue of a state's compliance has previously been raised against a state for which it was found in compliance that was the subject of a prior unsuccessful challenge under this paragraph, such state need only respond that it previously was held in compliance on that same issue. CRIC and the Governing Board, however, must take into consideration any documentations that supports such state is not in compliance.

3. Reliance. The determination of a member state being in compliance shall be based only on a review of the state's laws, regulations and written policies; such provisions listed in order of preference and reliance. Legislation shall be relied upon only if it has passed both legislative chambers (or the legislative chamber for a unicameral state) and there is no known threat of a Governor's veto. A regulation shall be relied upon only if it has been fully adopted. A written policy shall be relied upon only if it is publically accessible through the state revenue agency's web site.

B. ~~Compliance Review And Interpretations Committee.~~

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~~1. Responsibility. Pursuant to Article 7, Section 2 of the by laws, the Compliance Review and Interpretations Committee is responsible for reviewing compliance review reports to determine any needs for re-assessment and recommending findings of compliance and non-compliance to the Governing Board.~~

~~2. Recertification Documents.~~

- ~~a. By August 1 of each year, each member state shall submit to the Executive Director a statement certifying that the state is in compliance with the Agreement or submit a statement of noncompliance. The Executive Director shall forward all statements and any accompanying documents to the Chair of the Compliance Review and Interpretations Committee. A member state shall indicate any known items of noncompliance that may occur at a date following its certification submission or action needed to be taken to comply with requirements of the Agreement with future effective dates.~~
- ~~b. With the statement in subsection (a), each member state shall submit a certificate of compliance that sets out the state's statutes, rules, regulations, or other authorities that have been adopted to come into compliance with the specific provisions of the Agreement.~~
- ~~c. Each member state shall post its statement of recertification or its statement of noncompliance and an updated certificate of compliance on the state's web site by August 1 of each year. The updated certificate of compliance shall reflect the state's compliance with the provisions of the Agreement through August 1 of the year of submission. The Executive Director shall post all recertification filings on the Governing Board's web site.~~

~~3. Evaluation~~

- ~~a. The Compliance Review and Interpretations Committee and any designees that the chair of the Committee appoints to provide assistance shall review all statements and accompanying documents.~~
- ~~b. The Compliance Review and Interpretations Committee shall submit to a member state any findings of noncompliance based on a review of a certificate of compliance or other documentation submitted with a member state's annual statement of recertification. Such member state shall have 30 days to respond to the findings in writing to the chair of the Compliance Review and Interpretations Committee. No sooner than 31 days after submission of the findings to the member state, the Compliance Review and Interpretations Committee shall determine if further action is warranted.~~
- ~~c. If the Compliance Review and Certification Committee finds that a member state is in compliance with the Agreement, the committee shall report such findings to the Governing Board. If the Compliance Review and Interpretations Committee determines that a member state is not in compliance with the Agreement, the committee shall submit such findings to the Governing Board.~~

E. C. Public Notice. The Executive Director shall provide a copy notice and copies of a statement any statements of noncompliance from the received by a member state and any

findings of noncompliance by the ~~Compliance Review and Interpretations Committee~~ CRIC to and shall solicit comments from the following parties:

1. the authorized representative of each member state;
2. the Chair of the State and Local Advisory ~~Committee~~ Council;
3. the Chair of the Business Advisory Council; and
4. the general public as provided in Rule 806.2.

F. D. Agenda. ~~No sooner than 60 days after the solicitation of comment, the statement~~ If possible, by December 31 of the recertification year any statements of noncompliance from ~~the a~~ member state and any findings of noncompliance by the ~~Compliance Review and Interpretations Committee, the issue as to whether the member state is in compliance with the Agreement~~ CRIC shall be placed on the agenda of the Governing Board for either a regular meeting or a special meeting. In addition, upon a motion at that same meeting, the Governing Board shall determine if a state is out of compliance that did not have a finding of noncompliance by CRIC based on documentation reviewed by CRIC or submitted to the Governing Board. If a member state is found to be out of compliance by the Governing Board, the member state shall be subject to sanctions as authorized under Section 809 of the Agreement.

G. E. Appeal. ~~If the subject state~~ any person disagrees with the Governing Board's determination, ~~the subject state~~ that person may invoke the ~~appeals~~ issue resolution process provided for in Section 1002 of the Agreement.

H. F. ~~Publication of the Decision~~ Decisions. Once the decision of the Governing Board becomes final, either because no appeal is filed or the appeal procedures have been exhausted, the decision shall be sent to the subject state and a copy of the decision shall be posted on the Web. The Governing Board's web site shall list the following for each state found not in compliance:

1. The date a state was found not in compliance;
2. The noncompliance issue(s);
3. The sanction(s) imposed with any timeframes; and
4. When known, the date the state will return to compliance.

Section 33X: DUE DATES FOR RETURNS, REMITTANCES AND DOCUMENTS

Each member state shall provide that if a due date for any return, remittance, or other tax report or document required to be filed for taxes subject to this Agreement falls on a weekend day or a legal public holiday, the return, remittance or other report or document is due to the state on the next succeeding day that is not such a day. Legal public holiday has the same meaning as used in 5 U.S.C. 6103(a) with the application of 5 U.S.C. 6103(b)(1) and (b)(2) for holidays falling on a weekend day. Nothing in this section prohibits a state from extending the due date for other holidays.

Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS

Each member state shall:

- A. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein. The state shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.
- B. Require, at each member state's discretion, all remittances from sellers under Models 1, 2, and 3 to be remitted electronically.
- C. Allow for electronic payments by both ACH Credit and ACH Debit.
- D. Provide an alternative method for making "same day" payments if an electronic funds transfer fails.
- E. ~~Provide that if a due date falls on a legal banking holiday in a member state, the taxes are due to that state on the next succeeding business day.~~
- F. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.

Section 81X: Filing Documents With Governing Board

The due date for filing any documents pursuant to (1) this Agreement, (2) its rules, (3) to the Governing Board, including its Executive Director, (4) a committee of the Governing Board, (5) and the State and Local Advisory Council shall be on the next succeeding day if the date falls on a weekend day or a legal public holiday. Legal public holiday has the same meaning as used in 5 U.S.C. 6103(a) with the application of 5 U.S.C. 6103(b)(1) and (2) for holidays falling on a weekend day.

A motion by Wisconsin to amend the SSUTA relating to audit overpayments:

Section ___: NETTING TAX DUE ON AUDITS

When conducting an audit a member state shall net any overpayments, whether owed as a sales or a use tax, against any additional tax due for the same tax period and the imposition of penalty and interest, if any, shall be based on the net tax due. A member state may restrict such netting to only apply to the netting of tax owed by a person as a purchaser.

A motion by Ohio to amend the SSUTA relating to exemption certificates:

Section 317: ADMINISTRATION OF EXEMPTIONS

A. Each member state shall observe the following provisions when a purchaser claims an exemption:

1. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
3. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
4. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
5. A member state may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
6. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
7. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
8. After December 31, 2007, in the case of drop shipment sales, member states must allow a third party vendor (e.g., drop shipper) to claim a resale exemption based on an exemption certificate provided by its customer/re-seller or any other acceptable information available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer/re-seller is registered to collect and remit sales and use tax in the state where the sale is sourced.

B. Each member state shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption

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certificate when the purchaser claims an entity-based exemption when (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on the uniform form and posting it on a state's web site is an indicator) that the claimed exemption is not available in that state; or to a seller who accepts an exemption certificate claiming multiple points of use for tangible personal property other than computer software for which an exemption claiming multiple points of use is acceptable under Section 312.

C. 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.

1. If the seller has not obtained an exemption certificate or all relevant data elements as provided in Section 317, subsection (C) the seller may, within 120 days subsequent to a request for substantiation by a member state, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the Agreement.
2. Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.
3. Notwithstanding the aforementioned, each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. States may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

D. Each state shall post on its website the uniform streamlined sales and use tax exemption certificate with any applicable graying out of non-applicable exemption types (pursuant to subsection B of this Section) that any seller can use to document an exemption claimed by a purchaser. While the state may provide other forms and methods for sellers and purchasers to use to document a claimed exemption, on audit, regardless of the form or method used, a state may not require sellers to furnish additional documentation or verify any documentation beyond that required by this section. If the uniform streamlined sales and use tax exemption

certificate is amended, a state shall have no more than sixty days from it last being amended to post the amended form.

[Every state shall conform to the amendment in subdivision D of this section by July 31, 2010.]

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A motion by Wisconsin to amend the SSUTA relating to purchasers and state level administration:

Section 301: STATE LEVEL ADMINISTRATION

Each member state shall provide state level administration of sales and use taxes. The state level administration may be performed by a member state's Tax Commission, Department of Revenue, or any other single entity designated by state law. Sellers and purchasers are only required to register with, file returns with, and remit funds to the state level authority. Each member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. Each member state shall conduct, or as approved by the Governing Board authorize others to conduct on its behalf, all audits of the sellers and purchasers registered under the Agreement for that state's tax and the tax of its local jurisdictions, ~~and local~~ Local jurisdictions shall not conduct ~~independent~~ sales or use tax audits of sellers or purchasers registered under the Agreement.