

# DRAFT- 9/28/07

## Destination/Destination-Origin Proposal

### Summary

States will have the option of being a Destination State or a Destination-Origin State.

- Destination State- Adopts destination sourcing for interstate and intrastate sales.
- Associate Member Destination-Origin State- Adopts destination sourcing for all interstate sales and may continue to use origin sourcing on intrastate sales pursuant to uniformity requirements that will be developed and placed in the Agreement.
- Full Member Destination-Origin State- Adopts destination sourcing for all interstate sales, continues to use origin sourcing on intrastate sales pursuant to uniformity requirements that will be developed and placed in the Agreement, and pays additional vendor/CSP compensation.

### Key Premises

- If origin sourcing is to remain on intrastate sales, provide as much uniformity, simplicity and certainty as possible while recognizing the difficulty for states, retailers, purchasers and CSPs associated with changing current systems.
- States that are not able to adopt uniform destination sourcing and that wish to be full members of the Agreement must provide compensation to those sellers, purchasers and CSPs that must continue to accommodate origin sourcing.

### Key Provisions

- 1) Destination Sourcing for all interstate sales.
  - Every interstate transaction can only be sourced to one state and that state will always be the destination state.
  - All interstate transactions terminating in a Destination-Origin State will be sourced exactly the same as an interstate transaction terminating in a Destination State.
  - All interstate transactions originating in a Destination-Origin State will be sourced exactly the same as an interstate transaction originating in a Destination State.
  - State databases (rates, boundaries, zip codes) will be implemented in all states and will be applied uniformly for all interstate sales.

- 2) Destination-Origin States that are found in compliance with the Agreement, including requirements on origin sourcing on intrastate sales, will become Associate Members.
  - They must comply with all provisions of the Agreement of general applicability and must also comply with Agreement requirements on origin sourcing.
  - All Associate Membership provisions apply-
    - a. Cannot vote on Agreement amendments, interpretations or compliance petitions
    - b. Cannot be on CRIC committee
    - c. Must pay CSP compensation
    - d. Must provide amnesty while associate members and for 12 months after full membership
    - e. Sellers are not required to collect for Associate states
- 3) Destination-Origin States that are found to be in compliance with the Agreement, including requirements on origin sourcing on intrastate sales, and pay additional compensation will be Full Members.
  - Requirement for additional compensation will be placed in the Agreement.
  - Amount of additional compensation will be established by the Governing Board.
  - Additional compensation will target those burdened by continuation of origin sourcing. This will include CSPs and sellers/purchasers that have both intrastate and interstate sales.
- 4) Restrictions on Origin Sourcing.
  - Allow states to utilize existing origin sourcing practices as much as possible to avoid having to change current systems.
  - Place restrictions on origin sourcing to provide as much uniformity and certainty as possible.
  - Prohibit Destination-Origin States from making changes to existing origin sourcing that increase compliance costs without requiring additional compensation.
- 5) Current Associate State status will be extended.
  - Allow existing Associate states time to comply with proposal.
  - Reconcile membership dues requirements.
- 6) Impact on sellers/purchasers by allowing Destination-Origin states.
  - In-State seller with no interstate sales
    - i. Intrastate transaction- will not be required to switch to destination sourcing for delivery sales.
    - ii. Interstate transaction terminating in Destination-Origin state- not applicable.

- iii. Interstate transaction originating in Destination-Origin state- not applicable.
- In-State seller with interstate sales
  - i. Intrastate transaction- will not be required to switch to destination sourcing for delivery sales.
  - ii. Interstate transaction terminating in Destination-Origin state- not applicable.
  - iii. Interstate transaction originating in Destination-Origin state- no impact (identical to Destination state as destination sourcing will be applied).
- Out-of-State seller with no presence in Destination-Origin state-
  - i. Intrastate transaction- no impact (no intrastate sales).
  - ii. Interstate transaction terminating in the Destination-Origin state- no impact (identical to Destination state as destination sourcing will be applied and all databases must be available).
  - iii. Interstate transaction originating in the Destination-Origin state- no impact (identical to Destination state as destination sourcing will be applied).
- Out-of-State seller with presence in Destination-Origin state-
  - i. Intrastate transaction- will not be required to switch to destination sourcing on delivery sales but must continue to use and maintain systems to accommodate origin sourcing.
  - ii. Interstate transaction terminating in the Destination-Origin state- no impact (identical to Destination state as destination sourcing will be applied and all databases must be available).
  - iii. Interstate transaction originating in the Destination-Origin state- no impact (identical to Destination state as destination sourcing will be applied).

7) Commerce Clause Implications

- Kirkwood Glass case supports constitutionality of this approach (Missouri Supreme Court).
- Consider congressional action to affirm constitutionality of proposal as part of federal streamlined legislation.