

Business

- **Imposition:** The MPU provision should not be an imposition statute.
- **Sourcing:** The MPU provision should be a sourcing provision only.
- **Exemption Certificates – Applicable Jurisdiction:** In determining whether to provide an exemption certificate claiming multiple points of use or a direct pay permit, a purchaser would look to the state to which the transaction would be sourced under Section 310 of the Agreement.
- **Direct Pay Permits - Issuance:** The MPU provision should provide that where the state to which the sale would be sourced under Section 310 of the Agreement requires a purchaser to provide its direct pay permit, the purchaser must provide its direct pay permit rather than an MPU exemption.
- **Direct Pay Permit Holder – Sourcing:** The MPU provision should allow purchasers that are required to issue a direct pay permit the ability to apportion/allocate their tax base in the same manner as is required under Section 312, assuming all other provisions of §312 of the Agreement have been met.
- **Throwback / Allocation:** The MPU provision should not allow a state that would have otherwise taxed 100% of the transaction under Section 310, but only taxes a portion of the transaction pursuant to Section 312, to capture that portion of the transaction that is not taxed by any jurisdiction (i.e., a portion is used in a state with no sales and use tax; or the other jurisdiction doesn't have the ability to tax it pursuant to its imposition statutes). In other words, no state can apply a *throwback* principle. This also stays in line with sales tax

theory that you allocate a transaction and not apportion a transaction.

- **Election:** The MPU provision should be a purchaser's election.
- **Shall to May Concept:** The MPU provision should allow purchasers the option of electing to issue an exemption certificate claiming the MPU exemption.
- **Credit for Taxes:** The MPU provision should permit a purchaser that is required or elects to pay tax under Section 310 of the Agreement a credit for the taxes that are paid under Section 310. The credit would be granted by those jurisdictions which subsequently tax the use of the digital good, software, or service. The credit provided should be calculated based on the proportionate share of the sales price in that taxing jurisdiction multiplied by the tax rate that was applied in the jurisdiction to which the sale was sourced under Section 310.

Example: Purchaseco in SD, also has office locations in MN and IA. Purchaseco buys software from Seller in OH for \$1,000. Seller delivers the software to the Purchaseco's SD office. Purchaseco installs the software on its server in SD and the software is concurrently used in all 3 of its locations: Iowa, Minnesota and South Dakota.

Purchaseco does not issue an exemption certificate claiming MPU and - does not work with Seller to apportion tax. Seller charges Purchaseco SD sales tax on the full price,

resulting in \$50 sales tax (SD rate of 5% x purchase price of \$1,000).

Purchaseco is audited by MN. MN has adopted the MPU provisions and appropriate imposition language so that the use of the software is taxable in MN, even if the software does not physically reside in the state. MN assesses use tax on the portion of software used in MN (40%), but will allow pro-rated credit for the tax paid SD because Purchaseco did not issue an MPU. The credit is calculated as follows:

SD tax of \$50 (5%) is collected.

40% (\$400) of product is concurrently used in MN.

MN tax at 6.5% = \$26.

MN would allow a credit of \$20 (SD tax rate, 5% x portion taxed by MN, \$400).

Result = MN use tax of \$6 is due.

- **Allocation Must be Determined At the Time Reported for Sales & Use Tax Purposes:** The MPU provision should provide a clear measurement date for purposes of determining the point in time when the reasonable allocation should be determined. This shall be based upon the facts known on the date on the invoice.

Limitation to information technology Related Services: The MPU provision should be amended so that it would limit the types of services to which it would apply. It should be

specifically limited from “services” to “information technology” related services. Thus, the revised provision would apply to digital goods, computer software and IT related services.

- **Concurrent Use:** The MPU provision cannot provide a jurisdiction with the authority to source a digital good, software or service to its jurisdiction merely because it’s available for use. There must be actual use. Suggested change as follows based on existing Section 312 of the Agreement (effective 1/1/08):

“.....direct pay permit that knows at the time of its purchase of a digital good, computer software, or a service that the digital good, computer software, or service will be concurrently available ~~for~~ and used in more than one jurisdiction shall deliver to the seller in conjunction with its purchase an exemption certificate claiming multiple points of use or meet the requirements of Section 312, subsections (B) or (C).”