

Section 312 Survey

June 2006

State:

Name:

Date:

Please complete the following survey and return to judy.niccum@state.mn.us on or before July 13, 2006.

Shall/May

Can your state support the proposal below? Yes ___ No ___

Comments:

Effective January 1, 2008, Section 312 provides these three options for sourcing qualifying items:

- A. The purchaser may provide an MPU or a direct pay permit and report tax directly to the states where the qualifying items are concurrently available for use;
- B. the seller may work with the purchaser to arrive at the proper apportionment and the seller pays sales tax to the jurisdictions where the qualifying items are available for use; or
- C. the purchaser may choose not to provide an MPU or direct pay permit and the seller will source the sale under Section 310, even though the seller and the purchaser know at the time of sale that the items are concurrently available for use in more than one jurisdiction.

Proposal - If the purchaser chooses C (does not provide an MPU), states agree that the proper sourcing of the transaction is under Section 310. In other words, states would agree to allow credit for tax paid to the single state when making an assessment for tax due on any portion that is concurrently available for use in their state at the time of sale. See the scenario below for examples of how this would work.

Scenario - Business in SD also has office locations in MN and IA. Business buys software from company X in OH. X delivers the software to the SD office. Software is put on Business's server in SD and is concurrently used equally by all 3 locations.

- A. **Business issues an MPU or direct pay permit.** X does not charge sales tax. Business pays use tax on one-third of the purchase price to each of the 3 states. SD does not get tax on the full purchase price.
- B. **Business does not issue MPU or direct pay permit, but does work with X to apportion the tax.** X collects and remits sales tax on one-third of the sales price to each of the 3 states. SD does not get tax on the full purchase price.
- C. **Business does not issue MPU or direct pay permit and does not work with X to apportion tax.** X collects and remits sales tax to SD of the full price based on where delivered under Section 310.

Business is audited by MN. Assume that MN has adopted the MPU provisions along with appropriate imposition language so that the software is taxable in MN, even if it does not physically reside in the state. In this case, MN will assess use tax on the portion of software used in MN (1/3 of the purchase price), but will allow pro-rated credit for the tax paid SD because Business did not issue an MPU.

Example: Qualified item is sold for \$3000, delivered in SD and no MPU is issued

- SD tax of \$150 (5%) is collected
 - 30% of product (\$1,000) is concurrently used in MN subject to 6.5% tax = \$65
 - MN allows credit of \$50 (SD tax rate, 5% x portion taxed by MN, \$1,000). MN tax of \$15 is due.
- D. **No sales or use tax is paid on the purchase.** This could happen for any number of reasons: Business issues MPU or direct pay permit but does not pay use tax to the appropriate states; an MPU is not issued and, either X is not licensed to collect and remit tax in the state where the software is delivered and the purchaser did not pay use tax to the state where it was delivered, or the sale is not taxable in the state where it was sold or delivered.

Business is audited by MN and it is determined that the qualified item was concurrent available for use in multiple jurisdictions at the time of sale. Assuming MN has adopted the MPU provisions and appropriate imposition language to tax use of the software, MN assesses their full use tax on the portion used in MN (1/3 of the value). Business owes SD and IA use tax on the remaining value.

Software concurrently available for use

1. Fact Pattern: Software Company sells software that will be loaded onto Customer's server and will be accessed and used concurrently by Customer's employees located in several states. The only copy of the software received by the Customer is the one loaded onto the Customer's server. No subsequent copies of the software are made and sent to employees in other states.

Question: Do you agree that software is concurrently available for use in more than one jurisdiction within the meaning of Section 312A of the Agreement?

Yes ___ No ___

Comments:

2. Fact Pattern: Software is loaded onto Software Company's server and Software Company sells access to the software to Customer. Customer's employees gain concurrent access to the software from multiple locations. No copy of the software is ever delivered to the Customer.

Question: Do you agree that delivery of a copy of a computer program is not necessary to invoke the "concurrently available for use in more than one jurisdiction" language of Section 312A?

Yes ___ No ___

Comments:

3. Fact Pattern: A copy of a computer program is licensed by Software Company to Customer along with the right to make multiple copies of the software which will be delivered to Customer's users/employees in multiple jurisdictions.

Question: Do you agree that a license of a copy of a computer program that allows the licensee/Customer to make copies of the software that will be used in more than one jurisdiction by the Customer qualifies as "concurrently available for use in more than one jurisdiction" within the meaning of Section 312A?

Yes ___ No ___

Comments: