

A Motion by Utah to Amend Section 312, Regarding Multiple Points of Use Sourcing:

Section 312: MULTIPLE POINTS OF USE (Effective on and after January 1, 2008)

A. Notwithstanding the sourcing provisions of Section 310, a business purchaser that ~~is not a holder of a direct pay permit that~~ knows at the time of its purchase of a digital ~~good~~ product, computer software, or information technology related service that the digital ~~good~~ product, computer software, or information technology related service will be concurrently available ~~and for~~ used in more than one jurisdiction may elect shall deliver to source its purchase of qualifying items by allocating the purchase price directly to the jurisdictions where the qualifying items are concurrently available for and used by: 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).

- 1) delivering to the seller in conjunction with its purchase its direct pay permit for the jurisdiction to which the transaction would have been sourced under Section 310, where applicable; or

- 2) delivering to the seller in conjunction with its purchase an exemption certificate claiming a multiple points of use sourcing method as provided in Section 312, subsection (C); or
- 3) certifying to an allocation determined jointly with the seller as provided under Section 312, ~~subsection~~ division (D).

For purposes of Section 312, “Computer software”, ~~for purposes of this section~~ includes, but is not limited to computer software delivered electronically, by load and leave, or in tangible form. Purchase of ~~Ce~~ computer software received in-person by a business purchaser at a business location of the seller areas ~~are~~ not included under Section 312.

B. 4. ~~Upon receipt of a direct pay permit, or an exemption certificate claiming multiple points of use sourcing, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to self-assess and collect, pay, or remit any the applicable tax on a direct pay basis.~~

c. A purchaser delivering an exemption certificate claiming multiple points of use sourcing:

- 1) may use any reasonable, but consistent and uniform, method of ~~allocating~~ apportionment a transaction that is supported by the purchaser's books and records as they exist at the time ~~the~~ such transaction is reported for sales or use tax purposes; and
- 2) shall source such use to each jurisdiction based upon the allocation determined d in Section 312, ~~subsection~~ (C)(1);

~~3) Unless the D. A purchaser indicates a single transaction, the delivering an exemption certificate claiming multiple points of use sourcing will shall report and pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due will be considered a blanket certificate and calculated as if the apportioned amount of the digital good, computer software or service had been delivered to each jurisdiction to which the sale is apportioned pursuant to Section 312, subdivision (A)(2). E. The exemption certificate claiming multiple points of use will remain in effect for all future sales by the seller to the purchaser, (except as to the subsequent sale's specific allocation~~

~~apportionment that is governed by the principles of this subdivision Section 312, subdivisions (A)(2) and (A)(3)) until it is revoked in writing.~~

~~D. Notwithstanding Section 312, subsection (A), when the seller~~
Where the purchaser knows that the product will be concurrently available ~~for and~~ used in more than one jurisdiction, ~~but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection (A), the purchaser~~ seller may work with the seller ~~purchaser~~ to produce the correct apportionment. The ~~purchaser and seller may use~~ any reasonable, but consistent and uniform, method of ~~allocating on~~ apportionment ~~the~~ transaction that is supported by the seller's ~~and or~~ and purchaser's business records as they exist at the time the transaction is reported for sales or use tax purposes. ~~If ti~~ The purchaser shall certify ~~ies~~ to the accuracy of the allocation ~~apportionment~~ in writing. Upon acceptance of such ~~and the seller accepts the certification,~~ the seller shall source its sale to each jurisdiction as provided in the written certification ~~collect and remit the tax pursuant to Section 312, subdivision (A)(3).~~ In the absence of bad faith, where the seller has collected the appropriate amount of tax based on the

locations determined, the seller is relieved of any further obligations ~~to collect tax on any transaction where the seller has collected tax pursuant to the information certified by the purchaser.~~

- E. For purposes of this section, the phrase “at the time the transaction is reported for sales or use tax purposes” means the period of time up until invoice date. ~~allocation must be determined at the time the transaction is reported for sales or use tax purposes. This must occur no later than the period in which the return is due.~~
- F. When the purchaser has elected not to provide any of the documentation allowable in Section 312(A)(1), (2), or (3) ~~When the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate claiming multiple points of use exemption as required in Section 312, subsection (A), or certification pursuant to Section 312, subsection (B), the seller must source its sale shall collect and remit the tax based on the provisions of Section 310-309 and, absent any fraud,~~ is relieved of any further obligation.

G. A purchaser who delivers its holder of a direct pay permit may elect to ~~shall not be required to deliver an exemption certificate claiming multiple points of use to the seller. A direct pay permit holder shall~~ follow the provisions of Section 312 ~~subdivisions (C), (A)(2) and (A)(3) of this section~~ in determining ~~apportioning~~ the sourcing of its use of tax due ~~on~~ a digital product ~~good~~, computer software, or a information technology related service that will be concurrently available ~~for~~ and used in more than one jurisdiction.

H. Except if the provisions of Section 312 ~~subdivision~~ (A) are followed, ~~n~~Nothing in this section shall limit a person's obligation for sales or use tax to any jurisdiction~~state~~ provided that the qualifying purchases are subject to tax at the time of sale under that jurisdictions' sales and use impositions statutes~~in which the qualifying purchases are concurrently available for use,~~

I. Where a transaction has been subject to sales, use or other transaction taxes in the form of excise or privilege taxes, whether imposed on the seller or purchaser, according to the

provisions of Section 312, subsections (C), (D), (F) or (G) (FG) or according to the laws of a non-member state and its political subdivisions, the subsequent jurisdiction(s) must provide nor limit a person's ability under local, state, federal, or constitutional law, to claim a credit for sales or use taxes legally due and paid to other under that jurisdiction's imposition statutes.

J. No state may claim, for any reason, a greater proportion of allocation than is determined under this section.