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ARTICLE III – REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

Rule 309.1. Sourcing Certain Transactions.

Sections 309, 310 and 311 of the Streamlined Sales and Use Tax Agreement (SSUTA) contain the general sourcing regime. Rules 309.1, 309.2, 309.3, and 309.4 describe the application of Sections 309, 310 and 311 of the SSUTA to prewritten software transactions, to computer-related services, and sourcing software post-sale support agreements. Retail sales of software or services with respect to such software, other than computer pre-written software, are not covered by Rules 309.1, 309.2, 309.3, and 309.4. For purposes of Rules 309.1, 309.2, 309.3, and 309.4, “location” means a geographic situs within a particular jurisdiction. Under Section 309 of the SSUTA, the provisions of Rules 309.1, 309.2, 309.3, and 309.4 do not affect the obligation of a Purchaser or lessee to remit tax on the use of the product to the tax jurisdiction of that use.

Rule 309.2. Sourcing Prewritten Computer Software.

Using the hierarchy outlined in section 310 of the SSUTA, prewritten computer software is sourced as follows:

- (1) When prewritten computer software is received by the purchaser at a business location of the seller, the retail sale is sourced to that business location.
- (2) When prewritten computer software is not received by the purchaser at a business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs. Receipt may occur at multiple locations if the seller delivers the software to multiple locations. The transaction is sourced to those locations if the seller receives delivery information from the purchaser by the time of the invoice.

Example 1: Seller ships multiple hard copies of prewritten computer software to multiple locations of the Purchaser. The retail sale is sourced to those locations indicated by the instructions for delivery to each jurisdiction in which the Purchaser receives the prewritten computer software.

Example 2: Seller electronically delivers copies of the prewritten computer software to multiple locations of the Purchaser. The Seller has the information identifying the multiple locations for the electronic delivery of the prewritten computer software. The Seller sources the retail sale to each jurisdiction where the Purchaser receives the prewritten computer software.

Example 3: Seller electronically delivers prewritten computer software to the Purchaser's server in State A. The Seller has information identifying the location of the server in State A. Purchaser subsequently downloads copies of the prewritten computer software to its multiple locations. The Seller sources

the retail sale to the jurisdiction where the Purchaser receives the prewritten computer software, at the location of the server in State A. Seller has no responsibility to source the retail sale to any other state.

Example 4: Purchaser headquartered in State A also has locations in States B and C. The Seller electronically delivers prewritten computer software to the Purchaser's server located in State B. The Seller has information identifying all of these locations. The Purchaser's prewritten computer software will be accessed by its employees in all three states. The Seller sources the retail sale to the jurisdiction where the Purchaser receives the prewritten computer software, at the location of the server in State B. Seller has no responsibility to source the retail sale to any other state.

- (3) When subsections (1) and (2) of this rule do not apply, the retail 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.

Example: Seller electronically delivers prewritten computer software to an unknown location(s) of the Purchaser. The Seller has information identifying an address that is maintained in the Seller's files for business purposes. The Seller sources the retail sale to the jurisdiction for the address of the business location of the Purchaser available in the Seller's business records.

- (4) When subsections (1), (2), and (3) of this rule do not apply, the retail sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the retail sale, including the address of a purchaser's payment instrument if no other address is available when this address does not constitute bad faith.

Example: The Seller makes retail sales of prewritten computer software by allowing Purchasers to electronically download the prewritten computer software from Seller's website. In connection with the retail sale, the Purchaser discloses an address associated with the credit card used to pay for the prewritten computer software. This is the only location information the Seller receives from the Purchaser in connection with the retail sale. The Seller sources the retail sale to the jurisdiction of the address for the Purchaser associated with the credit card payment.

- (5) When neither subsections (1), (2), (3), or (4) of this rule apply, including circumstances in which the seller is without sufficient information to apply subsections (1), (2), (3), or (4) of this rule, then the retail sale is sourced to the jurisdiction for the address of the location from which the prewritten computer software was shipped or, if delivered electronically, was first available for transmission by the seller. "First available for transmission" means the location from which the software originated, irrespective of where it is routed, including intermediary servers.

Rule 309.3. Sourcing Computer-Related Services.

A retail sale of a computer-related service (hereinafter a “service”) is sourced where the purchaser receives the service. “Receipt” is defined in Section 311 of the SSUTA to mean where the purchaser makes first use of the service. The purchaser may make first use of a service in more than one location.

- (1) If the purchaser receives the service at a business location of the seller, the retail sale is sourced to that business location of the seller.

Example: A Purchaser drops off two of its computers at a Seller’s location for the purpose of having data recovered from one computer and transferred to the second computer. Upon the completion of the service, the Purchaser picks up the computers at the Seller’s location. The retail sale of the service is sourced to the Seller’s location.

- (2) When the service is not received by the purchaser at a business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs.

- a. If the service is received by the Purchaser exclusively at one or more locations of the Purchaser and the amount of the service received by the Purchaser at each location is known by the Seller, the retail sale is sourced to those locations.

Example 1: A Purchaser receives computer services at the Purchaser's location. The retail sale of computer services is sourced to the Purchaser's location.

Example 2: Seller sends computer repair personnel to two of Purchaser’s locations to perform data recovery services in States A and B. Seller bills Purchaser at an hourly rate for the work performed by its employee. The Seller’s employee tracks its time based on the work performed at each location. The Seller shall source the retail sale to States A and B in accordance with the time spent at each location.

Example 3: Purchaser, with a single location in State A, accesses, but does not license, software located on Seller's server located in State B, which is characterized in both States A and B as a computer-related service. The Seller knows that the Purchaser makes first use of this service at its location in State A. Seller sources the transaction to State A.

- b. If receipt occurs in multiple locations and the purchaser and seller agree to allocate the retail sale to multiple locations based on a reasonable and consistent method, the seller shall source the retail sale to those locations using such method. The locations and allocation must be provided by the purchaser by the time of the invoice.

Example: Purchaser, headquartered in State A, and Seller enter into a data processing services agreement. Under the agreement, Seller will conduct the data processing services from its facility located in State P. Purchaser

has employees evenly distributed in States A, B, C, and D who will be accessing Seller's facility remotely using a communications network and making use of Seller's data processing services. Purchaser requests that Seller's invoice reflect the fact that it will be receiving the data processing services equally in States A, B, C, and D. Seller agrees to the Purchaser's request and sources the transaction between the four states where the Purchaser will be receiving the services. Seller has satisfied its responsibility for sourcing the transaction under Section 310(A)(2).

- c. If the seller does not receive information as to the location(s) where the service will be received by the purchaser or the purchaser and seller do not agree, the seller shall source the retail sale to a single location in accordance with subsection (3), below.

Example: Purchaser is located in States A, B, C, and D. Purchaser and Seller enter into a data processing services agreement. Under the agreement, Seller will conduct the data processing services from its facility located in State P. Purchaser's employees in States A, B, C, and D will be accessing Seller's facility remotely using a communications network and making use of Seller's data processing services, but this information is not provided to the Seller. Seller sends the invoice to Purchaser in State A. Seller sources the transaction to State A. Seller has no responsibility for sourcing the transaction to any other state.

- (3) When subsections (1) and (2) of this rule do not apply, the retail 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.

Example: Purchaser accesses software located on the Seller's server from an unknown location. Seller's server is located in State A. The Seller has business records that identify the Purchaser's address as State B. The retail sale of access services is sourced to State B, where the Purchaser receives the service.

- (4) When subsections (1), (2), and (3) of this rule do not apply, the retail sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the retail 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 neither subsections (1), (2), (3), or (4) of this rule apply, including circumstances in which the seller is without sufficient information to apply subsections (1), (2), (3), or (4) of this rule, then the location is determined by the address from which the service was provided.

Rule 309.4. Sourcing Software Post-Sale Support Agreements that Combine Both Prewritten Computer Software and Services (Software Post-Sale Support Agreements).

- (1) The initial retail sale of a software post-sale support agreement sold by the seller of the software is sourced to the same address(es) as the retail sale of the underlying software.
- (2) a. The retail sale of a software post-sale support agreement sold after the retail sale of the underlying software, the renewal of a software post-sale support agreement, or the retail sale of a software post-sale support agreement by a seller other than the seller of the software is treated separately from the retail sale of the underlying software and shall be sourced in accordance with Section 310(A) of the SSUTA.
 - b. Where Section 310(A)(1) and (2) of the SSUTA do not apply, sourcing a retail sale of a renewal of a software post-sale support agreement to an address where the purchaser received the underlying software will not constitute bad faith so long as the seller has not received information from the purchaser indicating a change in the location of the underlying software.