

A motion by SLAC and BAC for an interpretive rule on sourcing transactions.

ARTICLE III – REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

Rule XXX Sourcing Transactions

Background: Sections 310 and 311 contain the general sourcing regime. This Rule describes the application of Sections 310 and 311 to prewritten software transaction and to certain services.

A. Prewritten Computer Software

As defined in Appendix C, Part I (7), the term "tangible personal property" means "personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

Agreement Section 310 provides general sourcing rules for all "products" (excluding lease or rentals). Using the hierarchy outlined in section 310, prewritten computer software is sourced as follows:

- 1) When prewritten software is received by the Purchaser at a business location of the Seller, the sale is sourced to that business location.
 - (a) Over-the-counter sales of prewritten software are sourced to the business location of the Seller.
 - (b) Prewritten computer software delivered electronically is not received by the purchaser at a business location of the seller.
- 2) When prewritten software is not received by the Purchaser at a business location of the Seller, the sale is sourced to the location(s) where physical [or electronic] receipt by the Purchaser occurs. Receipt may occur in multiple locations if the Seller receives delivery information from the Purchaser at the time of the sale.

Example 1: Seller delivers multiple hard copies of software to multiple locations of the Purchaser. The sale is sourced to those locations based on where the Seller delivers and the Purchaser receives the software.

Example 2: Seller electronically delivers copies of the software to multiple locations of the Purchaser. The Seller sources the sale to those locations.

Example 3: Seller electronically delivers software to the Purchaser's server in state A. Purchaser subsequently downloads copies of the software to its multiple locations. Seller sources the sale to state A. Seller is not accountable for post-sale transfers.

- 3) When (1) and (2) do not apply, the 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 1: Seller electronically delivers copies of software to an unknown location(s) of the Purchaser. The Seller sources the sale to a business location of the Purchaser available in the Seller's business records.

- 4) When (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the Purchaser obtained during the consummation of the 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 none of the previous rules apply, including circumstances in which the Seller is without sufficient information to apply the previous rules, then the location is determined by the address from which the prewritten software was shipped or, if delivered electronically, was first available for transmission by the Seller.

B.

Servi

~~A~~ sale of a service is sourced based on where the Purchaser receives the service. "Receipt" is defined in Section 311(B) to mean where the Purchaser makes first use of the service. [Making first use of services may occur in multiple locations provided that the seller receives information from the Purchaser at the time of the sale to support such use.]

- 1) If the Purchaser receives the service at the business location of the Seller, the sale is sourced to the business location of the Seller.

Example: A Purchaser delivers its computers to a Seller's location for the purpose of having the computers tested and diagnosed for malfunctions. The 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 sale is sourced to the location where receipt by the Purchaser occurs.

Example: [Insert]

- 3) When (1) and (2) do not apply, the 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: [Insert]

4) When (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the 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 none of the previous rules apply, including circumstances in which the seller is without sufficient information to apply the previous rules, then the location is determined by the address from which the service was provided.

6.) Special Rule for Sourcing Sales of Services Received at Multiple Locations. Notwithstanding the provisions of subparagraphs (b)(1)-(5), above:

(a) General Rule: When the Purchaser anticipates at the time of sale that services will be received in more than one jurisdiction, the sale is sourced under Section 310(a)(3).

(b) Exception: The Seller and the Purchaser may agree to source the transaction, using a reasonable method, to those jurisdictions where at the time of sale the Purchaser anticipates that the services will be received. If the Seller collects and remits the tax pursuant to the agreement with the Purchaser, the Seller shall be considered to have met its obligation to source the transaction under Section 310(a)(2).