

STREAMLINED SALES AND USE TAX AGREEMENT
COMPLIANCE REVIEW AND INTERPRETATIONS COMMITTEE

Interpretation Recommendation 2006-10

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 26th day of October, 2006 in accordance with Article IX, rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is The Boeing Company, 100 N. Riverside, Chicago, IL 60606, represented by Ralph H. Amon, P.O. Box 3707; M/C 7A-UF, Seattle, WA 98124. The request was made on the prescribed form on August 3, 2006 and was made pursuant to the provisions for consideration contained in Rule 902 at subsection (D).

Issue

The issue raised concerns a potential conflict of sourcing provisions related to prewritten computer software. Prewritten computer software is specifically defined to be tangible personal property by inclusion in the Streamlined Sales and Use Tax Agreement (Agreement) definition of "tangible personal property". Section 312 of the Agreement provides alternative sourcing of sales of a "digital good, computer software, or service" if those products will be concurrently available for use in more than one jurisdiction and a multiple points of use (MPU) exemption is claimed by the purchaser.¹ The MPU sourcing provisions of Section 312 effectively provides the ability to allocate the transaction to multiple jurisdictions where the product is concurrently available for use. The issue presented is whether there is a sourcing conflict under certain circumstances for prewritten computer software between the general sourcing provisions of Section 310, which generally apply to sales of tangible personal property, and the MPU sourcing provisions of Section 312. The general sourcing provisions of Section 310 do not provide the ability for allocation of the transaction to multiple jurisdictions, and under certain circumstances provide the ability to tax to the jurisdiction to which the prewritten computer software was originally delivered.

The Boeing Company presented two specific questions:

- 1) How is the purchase of tangible personal property sourced when the tangible personal property will be accessed from multiple jurisdictions?
- 2) How is the purchase sourced when the property will be redelivered to multiple jurisdictions?

Public Comment

No written public comment was received.

¹ MPU Agreement provisions include only computer software delivered electronically for periods prior to January 1, 2008, and include all computer software regardless of delivery method for periods beginning January 1, 2008.

Recommendation

By majority vote the Compliance Review and Interpretations Committee (Committee) submits to the Governing Board the following interpretation recommendation regarding the two questions asked. It is important to note that the Committee assumed that an exemption certificate claiming MPU was provided to the seller by the purchaser for each question asked.

The following recommended interpretations are made:

- 1) Upon tender or receipt of an exemption certificate claiming MPU, the sale and purchase of prewritten computer software (tangible personal property) will be sourced under Section 312 to the multiple jurisdictions in which the software will be concurrently available for use (accessed).
- 2) Upon tender or receipt of an exemption certificate claiming MPU, the sale and purchase of prewritten computer software will be sourced under Section 312 to the multiple jurisdictions in which the software will be concurrently available for use through redelivery.

These recommendations are made without a determination of when prewritten computer software is concurrently available for use as several Committee members expressed concern that example 3 provided by Boeing in its interpretation request might not represent factual circumstances whereby the software would be concurrently available for use. Example 3 described a situation where the purchaser provides its customers, rather than its employees, access to the software.

Rationale

The MPU sourcing provisions of Section 312 of the Agreement are specifically applied to the sale of digital goods, computer software and services. Section 312 also provides very specific circumstances under which its provisions apply: an exemption certificate claiming MPU is provided by the purchaser, and the product is concurrently available for use in multiple jurisdictions.

The specific sourcing provisions of Section 312 are intended to supersede the general sourcing provisions of Section 310 by their nature and construction. Section 310 is generally applicable to all sales, including services and digital goods, and is not limited to tangible personal property. To place limitations on the application of Section 312 to any of the specified products when the specific circumstances of the section are met would render the provision meaningless, which clearly was not the intent in enacting Section 312.

Committee Members

Larry Wilkie (Committee Chair), Tony Mastin, Dan Noble, Andy Sabol, Joe VanDevender, Dale Vettel, and Myles Vosberg