

Rule 311.X – Receipt of Services With Respect to Tangible Personal Property

A. 1. A service requiring that the provider examine, ~~or evaluate~~ or monitor tangible personal property for the purpose of ascertaining its location, quality, value or operation or for the purpose of protecting the property from theft or damage is a “service with respect to tangible personal property.” A service that results in a change to some aspect of the property, such as its appearance or function, is not a “service with respect to tangible personal property;” such a service is a “service performed on tangible personal property” subject to Rule 311.2.

2. Examples of services with respect to tangible personal property include:

a. Testing or inspection of tangible personal property, ~~and~~

b. Appraisal of tangible personal property, ~~and~~

c. Monitoring of tangible personal property.

3. The examination, or evaluation, of real property is not a “service with respect to tangible personal property” within the meaning of this rule.

B. ~~4.~~ Except as otherwise provided in the Streamlined Sales and Use Tax Agreement or the rules adopted by the Governing Board, a purchaser “receives” a service with respect to tangible personal property within the meaning of section 311.B of the Agreement at the location where the result of the service is received by the purchaser (or the purchaser’s donee). If, at the time of the invoice, the seller has no information as to where the service will be received, the sale is sourced, depending on the facts, under Sections 310.A.3, 310.A.4 or 310.A.5 of the Agreement.

12. To the extent the primary result of a service with respect to tangible personal property is the preparation and delivery of a report, the service is received at the location where the purchaser receives and can make first use of the information contained in the report. The service should be sourced to that location if the location is known to the seller at the time of invoicing. Receipt may occur at multiple locations if the seller is required to deliver the report to the purchaser or the purchaser’s donee at multiple locations.

Options under consideration:

a.) The transaction is sourced to those locations if the seller receives delivery information from the purchaser by the time of the invoice. OR

b.) In that case, it will be presumed that the seller does not have information as to the location at which the purchaser will make first use of the service and the transaction is sourced under Section 310.A.3, 310.A.4, or 310.A.5 of the Agreement, depending on the facts.

2. To the extent the result of a service with respect to tangible personal property is not the preparation and delivery of a report, the service is received at the location of the tangible personal property with respect to which the service is provided at the time the service is

provided. The service should be sourced to that location if the location is known to the seller at the time of invoicing. Receipt may occur at multiple locations if the tangible personal property with respect to the service is provided is located in multiple locations. If, at the time of the invoice, the seller has no information as to the location of the tangible personal property with respect to the service where the service is received, the transaction is sourced under Section 310.A.3, 310.A.4, or 310.A.5 of the Agreement, depending on the facts.

3. As used in this rule, “report” means an account or statement, however provided, communicating the evaluation or opinion of the service provider as to the quality, value, or operation of tangible personal property to the purchaser or the purchaser’s donee.

C. The following examples illustrate the proper determination of the location of “receipt” for services with respect to tangible personal property.

1. Testing or inspection of tangible personal property.

a. A manufacturer periodically sends samples of the product produced at its plant in State A to a laboratory for testing. The testing process destroys the sample in order to determine certain properties of the product. The laboratory sends a report on the results of the testing to the manufacturer’s office in State B and disposes of any remains of the product. The manufacturer receives the testing service at its office where it receives the laboratory report and can make first use of the results of the testing service. The transaction is sourced to the location of the manufacturer’s office in State B according to the provisions of Section 310.A.2 of the Agreement.

b. A food product manufacturer located in State A hires a testing lab located in State B to test the grain the manufacturer uses in making its product. An employee of the testing services goes to the manufacturer’s location, gathers grain samples and takes them back to the lab for analysis. A report is then written and mailed to the manufacturer’s business address in State A. The manufacturer receives the service where it receives the report. The transaction is sourced to the manufacturer’s location in State A where the report was mailed, according to the provisions of Section 310.A.2 of the Agreement.

c. Same facts as in example C.1.b. above except the report is emailed to the customer. In this case, the manufacturer receives the emailed report at its headquarters location in State B. If the seller knows the location where the emailed report is received, the sale should be sourced to that location pursuant to Section 310.A.2 of the Agreement. If the seller does not know the location where the emailed report is received, the transaction should be sourced according to the applicable provisions of section 310A.3, 310.A.4, or 310.A.5 of the Agreement.

2. Appraisal of tangible personal property.

a. A resident in County Y takes several items of jewelry to an appraiser in County Z. When the appraisal is completed, the purchaser picks up the jewelry and the appraisal report at the appraiser’s office. The purchaser makes first use of the service at the appraiser’s office where the appraisal report is received by the purchaser and the

purchaser can make first use of the service. The transaction is sourced to County Z according to the provisions of Section 310.A.1 of the Agreement.

b. An appraiser performs an appraisal of antique furniture owned by the purchaser at a storage facility in County Y. The appraiser returns to his office and completes the appraisal report. The appraiser subsequently mails the appraisal report according to instructions received from the purchaser to an address in County Z. The purchaser receives the service at the address in County Z where the appraisal report is delivered to the purchaser and the purchaser can make first use of the appraisal service. The transaction is sourced to County Z according to the provisions of Section 310.A.2 of the Agreement.

3. Monitoring of tangible personal property.

a. A service provider is engaged by a large multi-state purchaser to remotely monitor its equipment located in all fifty states from the service provider's monitoring center located in State A. The purchaser has engaged the service provider to perform remote monitoring service of its equipment to ensure the purchaser's equipment is properly working and to notify the customer if the equipment is not working correctly. The service provider will call third party vendors on behalf of the purchaser to take corrective action for equipment that is not working correctly. The multi-state purchaser is required to provide the service provider the full street address location of the equipment that is being monitored. The contract states that a single charge will be billed for this monitoring service. The service provider should use a consistent reasonable method to allocate the single charge among the various taxing jurisdictions where the equipment being monitored is located. The appropriate state and local taxes should be calculated for and sourced to each location according to the provisions of Section 310.A.2. of the Agreement. The transaction is sourced to State A, only to the extent the customer has equipment in State A that is to be monitored by seller.

Question: what happens if this is a contract and subsequent locations are added and the price changes or does not change with the addition of locations?

b. Same facts as in Example C.3.a. above except that the seller has multiple monitoring centers. The transaction is sourced the same as in the example above. The locations of the seller's monitoring centers are not relevant.

c. Same facts as in C.3.a. above except that the seller has no information regarding the location of the equipment being monitored. Instead of dispatching third parties to take corrective action for equipment that is not properly functioning, the provider notifies the purchaser whenever any of the equipment is not operating properly and the purchaser takes its own corrective action. Since the location of the equipment being monitored is unknown to the service provider, it cannot source the transaction based on the purchaser's receipt of the service at the various locations of the equipment. Therefore, the transaction is sourced according to the provisions of section 310.A.3, 310.A.4, or 310.A.5 of the Agreement, depending on the facts.

d. A theater company from State B contracts to perform a play at an auditorium in State A for five nights. The theater company hires a security company to provide guards to protect the scenery, props and costumes it brings to the auditorium for use in performing the play. The theater company receives the service of the security company at the auditorium in State A since that is the location of the property being guarded at the time the security service was being provided. The transaction is sourced to State A.