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Rule 309[twj1].6 – Receipt of Specified Digital products

A. Scope of rule. This rule addresses receipt for sales of specified digital products. Specified digital products, as defined in Appendix C of the Streamlined Sales and Use Tax Agreement’s Library of Definitions, are the following digital goods:

- a. **“Digital audio-visual works”** which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
- b. **“Digital audio works”** which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones, and
- c. **“Digital Books”** which means works that are generally recognized in the ordinary and usual sense as “books”.

B. Receipt of specified digital products generally. Except as otherwise provided in the Streamlined Sales and Use Tax Agreement, sellers of specified digital products must source the sales of those products under the general destination sourcing regime of section 310.A of the Agreement. Section 310.A.1 provides that in cases where the product is received by the purchaser at a location of the seller, the seller must source the product to that location under section 310.A.1 of the Agreement. If the purchaser receives the product at any other location, and that location is known to the seller, the sale of the product must be sourced to that location. If the location of receipt by the purchaser is unknown to the seller of the product, the seller should source the sale of the product according to the provisions of section 310.A.3, 4 or 5 of the Agreement as appropriate.

C. Examples: The following examples illustrate the sourcing of sales of specified digital products.

1. Sourcing to 310.A.1 – Seller’s place of business

Company A is targeting purchasers who want to watch movies, but have no Internet connection while in transit. Company A installed kiosks at various locations in State 1 where customers can pay \$3.99 to rent from one of 700 recent movies which are currently available for download from the kiosks. The movies qualify as specified digital products.

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A purchaser can obtain a copy of the movie either by inserting a “flash” or “thumb” drive into a port on the kiosk or by attaching a laptop or tablet computer or other portable computing device directly to the kiosk with a networking cable. Additionally, the kiosk emits a radio signal that can only be received within a limited radius of the kiosk (such as Wi-Fi or Bluetooth), which enables the purchaser to obtain the copy of the movie wirelessly. Once a purchaser downloads a movie, the purchaser may start watching it.

The sale is sourced to State 1 under Section 310.A.1 because (i) the kiosk is a business location of the seller and (ii) the purchaser receives the copy of the movie at or near the kiosk location in State 1.

2. Sourcing to 310.A.2 – Other place of receipt known to the seller.

Company Y makes available 1000s of movie titles to purchasers. Purchasers can stream the same movies for a twenty-four hour period through on-demand services. The movies qualify as specified digital products. Company Y also provides the broadband Internet connection terminating at the purchaser’s home (the service location) that the purchaser must use to obtain the movie content. The seller knows the purchasers must receive movies at the service address. Purchasers cannot view content from locations other than the service location. A purchaser buys a streamed movie from Company Y for its service location in State 1.

The sale of the movie is not sourced under SSUTA Section 310.A.1 because the purchaser does not receive the movie at a business location of the seller. The sale is sourced to that service location in State 1 under SSUTA Section 310.A.2 the purchaser receives the streamed movie at the service location known to the seller and.

3. Sourcing to 310.A.3 – Address for the purchaser available from the seller’s books and records.

Seller sells copies of songs for a set price per song. The songs qualify as specified digital products. Seller only sells the songs by making them available for purchasers to download from the Internet. In order for the purchaser to buy the songs, the purchaser must first establish an account on the seller’s website. The customer must enter such information as the purchaser’s name, mailing address, billing address and credit card information. The purchaser must also create a user name and password so the purchaser may return to the website and make additional purchases with minimal additional effort or time consumption. Seller does not collect or retain any information regarding the customer’s physical location at the time the

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customer downloads a song. A purchaser buys a song and pays for it by charging it to the credit card number in the customer's account

The sale of the song is not sourced under Section 310.A.1 because the purchaser does not receive the song at a business location of the seller. The sale of the song is not sourced under Section 310.A.2 because the seller does not know the purchaser's physical location where the product is received. When the purchaser created the account with the seller, the customer's mailing and credit card addresses became part of the seller's business records maintained in the ordinary course of its business. The sale is sourced either to the purchaser's mailing address or to the purchaser's credit card address under SSUTA Section 310.A.3.

4. Sourcing to 310.A.4 – Address for the purchaser obtained during the consummation of the sale.

The same facts as Example D.1 of this Rule, except the purchaser does not create an account with the seller. In order to purchase a song, a purchaser must provide the seller its credit card information, including a credit card billing address, during the consummation of sale. A purchaser buys a song using its credit card number during the consummation of sale.

The sale of the song is not under SSUTA Section 310.A.3 because the seller does not have any address for the purchaser in its business records maintained in the ordinary course its business. The sale is sourced to the purchaser's credit card billing address obtained by the seller during the consummation of the sale under SSUTA Section 310.A.4.

5. Sourcing to 310.A.5 – Address from which the specified digital product was first available of transmission by the seller

The seller has sold a digital song that qualifies as a specified digital product. The sourcing provisions in Sections 310.A.1 – 4 of the SSUTA do not apply. The seller has a server located at its research and development facility in State A from which it transmits digital songs to purchasers. Upon the purchase of a digital song, the product is transmitted from the R&D facility server and then routed through several other servers in States B and C before final delivery to the purchaser.

The sale is not sourced under SSUTA section 310.A.1 through 4. Therefore, the seller will source the sale to the location from which the digital song was first available for transmission by the seller (disregarding for these purposes any location that merely provided the digital transfer of the

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product sold). In this case, the sale may be sourced to the State A R&D facility where the digital song was first made available for transmission. The server locations in states B and C merely represent locations provided for the transfer of the digital songs and should not be used for sourcing purposes.

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