

AM06001

A Motion by Tennessee to Amend Section 309, regarding application of general sourcing rules and exclusions from the rules and Sections 314 and 315 regarding telecommunication sourcing:

Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS FROM THE RULES

- A. Each member state shall agree to require sellers to source the retail sale of a product in accordance with Section 310. The provisions of Section 310 apply regardless of the characterization of a product as tangible personal property, a digital good, or a service. The provisions of Section 310 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.
- B. ~~Section~~ Sections 310 and 312 ~~does~~ do not apply to sales or use taxes levied on the following:
1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
 2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in Section 310, subsection (D). The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to Section 310, subsection (C).
 3. Telecommunications services and ancillary services, as set out in Section 315, and Internet access service shall be sourced in accordance with Section 314.
 4. Until December 31, 2007, florist sales as defined by each member state. Prior to this date, these items must be sourced according to the requirements of each member state.

Section 314: TELECOMMUNICATION AND RELATED SERVICES SOURCING RULE

A. Except for the defined telecommunication services in subsection (C), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in the jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

B. Except for the defined telecommunications services in subsection (C), a sale of telecommunication services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

C. The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

1. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.

2. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. **(Effective through December 31, 2007)** A sale of prepaid calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.

3. **(Effective on and after January 1, 2008)** A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.

4. A sale of a private communication service is sourced as follows:

a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

b. Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel terminations points are located.

d. Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

D. The sale of Internet access service is sourced to the customer's place of primary use.

E. The sale of an ancillary service is sourced to the customer's place of primary use.

Section 315: TELECOMMUNICATION AND RELATED SERVICES SOURCING DEFINITIONS (Effective on and after January 1, 2008)

For the purpose of Section 314, the following definitions apply:

- A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
- B. "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services", including but not limited to "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".
- C. "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.
- D. "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- E. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

~~M. "Captioned Calling Service Point" means a location where the right to utilize mobile wireless services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.~~
M. "Captioned Calling Service Point" means a location where the right to utilize mobile wireless services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount, by an individual who utilizes the service on behalf of the entity.

H. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

I. "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

J. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service, the Internet access service or the ancillary service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

K. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

L. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

N. "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

O. "Service address" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
2. If the location in subsection (O)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

If the location in subsection (O)(1) and subsection (O)(2) are not known, the service address means the location of the customer's place of primary use.

Amendment AM000106 (11/13/06)

AM06001 12/14/06