

AM07024A03

September 7, 2007

A motion by the Sourcing/Associate State Taskforce to amend AM07024A02 relating to sourcing:

Section 310: GENERAL SOURCING RULES

- A. ~~The~~The retail sale, excluding lease or rental, of a product shall be sourced as follows:
1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
 2. When the product 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 (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.
 3. When subsections (A)(1) and (A)(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 the seller's business when use of this address does not constitute bad faith.
 4. When subsections (A)(1), (A)(2), and (A)(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 use of this address does not constitute bad faith.
 5. A member state that has local jurisdictions that levy sales or use taxes may elect to require sellers that make sales of tangible personal property from business locations in that state that are sourced to that state under subsections (A)(2), (3), or (4) of this section to source such sales to the address of the seller's business location in that state.

- a. Where taking of the order for and shipment or delivery of the tangible personal property were not made from the same business location of the seller in that state, the sale of tangible personal property shall be sourced to the local jurisdiction within that state indicated by the address for the seller's business location for the taking of the order for the sale.
 - b. Where the seller's business location where the order for the sale is taken is not known to the seller, the sale will be treated as if it were made from a business location of the seller outside the member state and will be subject to the provisions of subsection (A)(2), (3) or (4) of this section.
 - c. The provisions of subsections (A)(5) of this section do not apply to any sale sourced under subsections (B), (C), or (D) of this section.
6. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).
- B. The lease or rental of tangible personal property, other than property identified in subsection (C) or subsection (D), shall be sourced as follows:
1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (A). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be

altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).
 3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
- C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (D), shall be sourced as follows:
1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.
 2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).
 3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
- D. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (A), notwithstanding the exclusion of lease or rental in subsection (A).
- “Transportation equipment” means any of the following:
1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.
 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

- a. Registered through the International Registration Plan; and
 - b. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
3. Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
 4. Containers designed for use on and component parts attached or secured on the items set forth in subsections (D)(1) through (D)(3).

E.

1. A purchaser that has paid sales or use tax to a seller on a sale shall not be liable for additional sales or use tax by that state on that sale.
2. Any purchaser within a member state that holds direct pay authority with that state or that makes taxable purchases on which no tax is charged by the seller will be responsible for sales or use tax on that sale under that state's law.
3. A member state that elects to adopt the provisions of divisions (A)(5) of this section shall inform the Governing Board of such election.