

A motion by Indiana relating to sourcing:

Section 310: GENERAL SOURCING RULES

- A. 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 that sales of tangible personal property [or specified digital products] that are sourced to that state under subsections (A)(2), (A)(3), or (A)(4) of this section are taxed at the delivery rate provided for under subsection (E).
 6. The provisions of subsections (A)(5) and (E) of this section do not apply to any sale sourced under subsections (B), (C), or (D) of this section.
 7. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), ~~or (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. Any member state that elects to use the provisions of subsection (A)(5) of this section shall establish a delivery rate for payment or collection of tax on sales sourced to that state pursuant to subsections (A)(2), (A)(3), (A)(4), or (A)(5).
 2. A purchaser that has paid the delivery rate imposed by a member state under subsection (E)(1) of this section shall not be held liable for additional local sales or use tax in that state.

3. Allocation and distribution of any tax revenue collected for local taxing jurisdictions under the delivery rate adopted by a member state under subsection (E)(1) of this section shall be made pursuant to the laws of that member state. The Governing Board shall adopt uniform reporting requirements a member state may require of sellers for the purpose of determining the amount of delivery sales for that location. The Governing Board shall establish these requirements by July 1, 2008.

4. As used in subdivision (E) of this section:

a. "Delivery rate" means the rate imposed by the laws of a member state making the election provided for in division (E)(1) of this section, which can be used for the collection or payment of sales or use tax on sales of tangible personal property. The delivery rate shall be a combination of the applicable state sales and use tax rate and a rate to represent local taxes, which may be zero or any amount up to, but not to exceed the highest rate of tax levied by any local taxing jurisdiction in the state. If two or more local jurisdictions have authority to impose a sales or use tax in the same geographical area, the portion of the delivery rate representing local taxes may not exceed the highest combined rate of tax levied by any combination of local taxing entities with overlapping jurisdiction. A member state that changes the delivery rate must comply with the notice provisions of subsections (A) and (B) of section 305 of this agreement. To the extent the delivery rate exceeds the state rate, any amount above that is deemed to be the legally imposed local tax rate.

b. "Taxing jurisdiction" means a state or a political subdivision of a state, or portion thereof, in which the aggregate state and local tax rate is uniform.

5. The use of a delivery rate in subdivisions (E) of this section shall not violate Section 308 of this Agreement.

6. Any purchaser within a member state that holds direct pay authority with that state will be responsible for sales or use tax on that sale as determined under state law.

7. A member state that elects to adopt the provisions of divisions (A)(5) and (E) of this section shall inform the Governing Board of such election.

8. The effective date of this amendment shall be January 1, 2009.

Section 305: LOCAL RATE AND BOUNDARY CHANGES

Each member state that has local jurisdictions that levy a sales or use tax shall:

- A. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers. A state shall follow the provisions of this subsection for the enactment and any subsequent change in the delivery rate provided in Section 310 E.