**A motion by Oklahoma relating to sourcing:**

**PROPOSAL #2 11-29-07**

**NEW SECTION 310.1**

**A**. A state that has local jurisdictions that levy sales or use taxes may elect to source the retail sale of tangible personal property and digital goods pursuant to the provisions of this section in lieu of the provisions of Subsection A(2)(3) and (4) of Section 310 if they comply with all provisions of Subsection C of this section and the only exception to Section 310 is the exception provided for in subsection B of this Section.

**B** A state may source the following retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller:

1. The order is received in the same state by the seller where receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs;
2. Location where receipt of the product by the purchaser occurs is determined pursuant to Section 310A(2),(3) and (4); and
3. the business records of the seller that are maintained in the ordinary course of the seller's business are adequate to determine at the time the order is received where the order is received by the seller.

**C.** A state electing to source sales pursuant to this section shall comply with all of the following:

1. When the location where the order is received by the seller and the location where the receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs as determined pursuant to Section 310A(2),(3) and (4) are in different states, the sale must be sourced pursuant to the provisions of Section 310.
2. When the product is sourced pursuant to this section to the location where the order is received by the seller, only the sales tax for the location where the

order is received by the seller may be levied. No additional sales or use tax based on the location where the product is delivered to the purchaser may be levied. The purchaser shall not be entitled to any refund if the combined state and local rate or rates at the location where the product is received by the purchaser is lower than the rate where the order is received by the seller.

3. A purchaser shall have no additional liability to the state for tax, penalty or interest on a sale for which the purchaser remits tax to the seller in the amount invoiced by the seller if such invoice amount is calculated at either the rate applicable to the location where receipt by the purchaser occurs or at the rate applicable to the location where the order is received by the seller. A purchaser may rely on a written representation by the seller as to the location where the order for such sale was received by the seller. When the purchaser does not have a written representation by the seller as to the location where the order for such sale was received by the seller, the purchaser may use a location indicated by a business address for the seller that is available from the business records of the purchaser that are maintained in the ordinary course of the purchaser's business to determine the rate applicable to the location where the order was received.

4. The location where the order is received by the seller means the physical location of a seller such as an established outlet, office or location operated by the seller or the seller's employee where an order is initially received by the seller and not where the order may be subsequently accepted, completed or fulfilled. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.

5. Such state shall provide for direct pay permits pursuant to Section 326 of this Agreement and the requirements of this subsection. Purchasers which remit sales and use tax pursuant to such a permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. The member state adopting the origin option may establish reasonable thresholds at which level the will consider direct pay applications. The member state may not limit direct pay

applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product and the time of the purchase.

6. A member state that elects to source the sale of tangible personal property and digital goods pursuant to the provisions of this section shall inform the Governing Board of such election.