

CORRECTED AM07038

A motion by Oklahoma relating to sourcing:

Section 310: GENERAL SOURCING RULES

- A. ~~The~~ Except as provided in Section 310.1, 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. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), or (A)(4) 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).

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 of Section 310 if they comply with all provisions of Subsection B of this section and the only exception to Section 310 is the exception provided for in subsection C of this Section.
- B.** 1. When the location where the order is accepted and the location where the product is received by the purchaser (or the purchaser’s donee, designated as

such by the purchaser) are in different states, the sale must be sourced pursuant to the provisions of Section 310.

2. The location from which a product is shipped shall have no significance in determining either the location where the order is accepted or the location where the sale is sourced.

3. When the product is delivered in the same state to a location different from the location where the order is accepted, and pursuant to this section, is sourced to the location where the order is accepted, only the sales tax for the location where the order is accepted may be levied. No additional sales or use tax based on the location where the product is delivered may be levied.

C. A state may source the retail sale, excluding lease or rental, of tangible personal property or digital goods to the location where the order is accepted if the order is accepted in the same state where the product is received by the purchaser (or the purchaser's donee, designated as such by the purchaser) and the business records of the seller that are maintained in the ordinary course of the seller's business are adequate to determine where the order is accepted by the seller and where the product is received by the purchaser (or the purchaser's donee, designated as such by the purchaser).

D. 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.

NEW SECTION 604: ADDITIONAL MONETARY ALLOWANCE REQUIRED FOR MEMBERS MAKING CERTAIN ELECTION

A. In addition to the monetary allowance provided pursuant to Sections 601, 602 and 603 of this Agreement, every full member state that makes the election authorized by Section 310.1 of this Agreement shall provide a monetary allowance as provided in this section.

B. The monetary allowance shall be provided to CSPs, sellers burdened by the continuation of origin sourcing and purchasers burdened by the continuation of origin sourcing.

C. The Governing Board shall establish the amount of such allowance and the eligibility for such allowance. The Governing Board shall determine the effective date of any amendments to the amount of or eligibility for such allowance.

Section 705: ASSOCIATE MEMBERSHIP

A. An associate member shall have all the rights and privileges of a member state except that:

1. An associate member may not vote on amendments to or interpretations of the Agreement when the provisions of Section 701 have been met without the use of associate members; and
2. An associate member may not vote to determine if a petitioning state is in compliance with the Agreement pursuant to Section 804 of the Agreement.
3. A representative of an associate member state shall not be eligible to serve on the compliance review and interpretations committee.

B. A state which is an associate member on January 1, 2007, shall retain such status until the Governing Board finds such state to be in compliance pursuant to Section 805 or ~~December 31, 2007~~ December 31, 2008, whichever is earlier, without regard to whether the population requirement of Section 701 has been met. Any associate member that has not been found in compliance by ~~December 31, 2007~~ December 31, 2008, shall forfeit its status as an associate member. The president of the governing board shall provide an associate member state with the reasons why such state is not in compliance with the Agreement. Forfeiture of its status as an associate member does not preclude a state from re-petitioning for membership pursuant to Section 801.

C. Notwithstanding any provision of this Agreement to the contrary, a seller may, but is not required to collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such taxes under applicable law. Notwithstanding the provisions of Section 401 (B), a seller that volunteers to collect tax in an associate member state is not required to collect tax in any other associate member state. An associate member shall be responsible for payment of costs as provided in Article VI, other than the monetary allowance provided for in Section 604, for those sellers that volunteer to collect tax in an associate member state.

D. Neither the Governing Board nor a member state may share or grant access to an associate member state any seller information from the seller's registration pursuant to Section 401. Neither the Governing Board nor a member state may share or grant access to an associate member state any seller information from an audit conducted by the Governing Board or a member state on behalf of the Governing Board unless the associate member state is a party to the audit.

E. An associate member shall be responsible for the payment of the petition fee and the annual cost allocation as determined by the Streamlined Sales Tax Implementing States or Governing Board.

F. An associate member state shall provide amnesty pursuant to the provisions of Section 402, provided, the amnesty shall be in effect from the date the associate member status is attained until 12 months after the associate member state becomes a full member state.

Section 801: ENTRY INTO AGREEMENT

A. After the effective date of the Agreement, a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. The petition for membership shall include such state's proposed date of entry. The petitioning state's proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective.

B. The petitioning state shall provide a copy of its petition for membership and the certificate of compliance to each member state when the petitioning state submits its petition for membership to the governing board. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site.

C. A state that petitions for membership after January 1, 2007, that is found to be in compliance pursuant to Sections 804 and 805 of the Agreement except that the changes to their statutes, rules, regulations or other authorities necessary to bring them into compliance are not yet in effect, shall be designated an Associate Member effective on the first day of the calendar quarter that is not more than twelve months before its proposed date of entry as a member state. Such twelve month

period may be extended to eighteen months if the Governing Board, by a unanimous vote approves such extension. Such states shall be subject to the annual recertification requirement set forth in Section 803 of this Agreement for all issues other than the delayed effective date issues identified at the time the state becomes an Associate Member. Extensions of effective date delays beyond those identified at the time the state becomes an Associate Member shall require the state to submit a statement of non-compliance pursuant to Section 803. Provided the statutes, rules, regulations or other authorities remain in effect, the state shall automatically become a Member State on the state's proposed date of entry.

D. A state which becomes an associate member after January 1, 2007 pursuant to subsection C of this section shall forfeit its status as an associate member on the date provided for compliance pursuant to subsection C of this section, if the state's laws are not in compliance at that time. A state that forfeits its status as an associate member because it has extended its effective date for required law changes beyond the date set forth in its petition for membership may not file another petition for membership for a period of twelve months after such state forfeits its status as an associate member.

E. A state which petitions to become a member of the Agreement and makes the election authorized in Section 310.1 of this Agreement shall note the election in its petition for membership. Such a state shall only become a full member state if the Governing Board determines its compliance pursuant to Sections 804 and 805 of this Agreement and the Governing Board further determines that the state's laws, rules and regulations provide for payment of the monetary allowance provided in Section 604 of this Agreement. If the Governing Board determines that such state is in compliance with the Agreement except that the state's laws rules and regulations do not provide for the payment of the allowance set forth in Section 604 of the Agreement, the State shall be admitted as an Associate Member state.

Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER

With respect to each member state, the Agreement shall continue in full force and effect until a member state withdraws its membership or is expelled. A member state's

withdrawal or expulsion cannot be effective until the first day of a calendar quarter after a minimum of sixty days' notice. A member state shall submit notice of its intent to withdraw from the Agreement to the governing board and the chief executive of each member state's tax agency. The member state shall provide public notice of its intent to withdraw and post its notice of intent to withdraw on its web site. The withdrawal by or expulsion of a state does not effect the validity of the Agreement among other member states. A state that withdraws or is expelled from the Agreement or forfeits status as an Associate Member remains liable for its share of any financial or contractual obligations that were incurred by the governing board prior to the effective date of that state's withdrawal, ~~or~~ expulsion or forfeiture of its status as an Associate Member. The appropriate share of any financial or contractual obligation shall be determined by the state and the governing board in good faith based on the relative benefits received and burdens incurred by the parties.