

A motion by Ohio to amend Sections 309, 310.1 and 326 of the SSUTA relating to origin sourcing and direct pay:

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 or Section 310.1. ~~The~~ Except as provided in Section 310.1, the provisions of Section 310 apply to all sales regardless of the characterization of a product as tangible personal property, a digital good, or a service. ~~The~~ Except as provided in this Agreement, the provisions of Section 310 and Section 310.1 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. Sections 310, 310.1 and 312 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, 2009, 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 310.1: ELECTION FOR ORIGIN-BASED SOURCING (Effective January 1, 2010)

- A. A member state that has local jurisdictions that levy or receive 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 member state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:
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. At the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of sales or use tax to be imposed captures the location where the order is received.
- C. A member 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~~ sale 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 on that sale. 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 member state may not require a seller to utilize a recordkeeping system which captures the location where an order is received to calculate the proper amount of sales or use tax to be imposed.
4. 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.
5. The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.
6. Such member 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. A member state may establish reasonable thresholds at which level the member state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and non-taxable purchases. The member state shall establish a process for application for a direct pay permit as provided herein. The member state may require the applicant to demonstrate:~~

- ~~a. Ability to comply with the sales and use tax laws of the state;~~
- ~~b. A showing of a business purpose for seeking direct payment permit and how the permit will benefit tax compliance; and~~
- ~~c. Proof of good standing under the tax laws of the state.~~

~~The member state shall review all permit applications in a timely manner so that applicants receive notification of authorization or denial within one hundred twenty (120) days. 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 at the time of the purchase.~~

7. When taxable services are sold with tangible personal property or digital products pursuant to a single contract or in the same transaction, are billed on the same billing statement(s), and, because of the application of this section, would be sourced to different jurisdictions, a member state shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. Such member state election is required until such time as the governing board adopts a uniform methodology to address such sales.
 8. 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.
- D. Compliance with the provisions of this section shall satisfy a state's eligibility for membership in this Agreement as follows:
1. If a state is in substantial compliance with each of the provisions of this Agreement other than sourcing of sales of tangible personal property and digital goods as provided in Section 310 and elects to source sales of tangible

personal property and digital goods pursuant to this section, such state may become an associate member state in the same manner as provided for states to become full member states pursuant to Article VIII of this Agreement.

2. On or after January 1, 2010, a state which becomes an associate member state pursuant to this subsection shall automatically become a full member state, provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the Agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section.
3. The provisions of this section shall be fully effective for all purposes on or after January 1, 2010, provided that at least five (5) states which are not full member states on December 31, 2007, have been found to be in substantial compliance with each of the provisions of the Agreement other than sourcing sales of tangible personal property and digital goods pursuant to Section 310 of the Agreement and have notified the governing board of an election pursuant to paragraph 8 of subsection C of this section to source sales pursuant to this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied.

Section 326: DIRECT PAY PERMITS

Each member state shall provide for a direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit will make a determination of the taxability and then report and pay the applicable tax due directly to the tax jurisdiction. ~~Each state can set its own limits and requirements for the direct pay permit. The governing board shall advise member states when setting state direct pay limits and requirements, and shall consider use of the Model Direct Payment Permit~~

~~Regulation as developed by the Task Force on EDI Audit and Legal Issues for Tax Administration.~~

Purchasers which remit sales and use tax pursuant to a direct pay 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. A member state may establish reasonable thresholds at which level the member state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and non-taxable purchases. The member state shall establish a process for application for a direct pay permit as provided herein. The member state may require the applicant to demonstrate:

- A. Ability to comply with the sales and use tax laws of the state,
- B. A showing of a business purpose for seeking direct payment permit and how the permit will benefit tax compliance, and
- C. Proof of good standing under the tax laws of the state.

The member state shall review all permit applications in a timely manner so that applicants receive notification of authorization or denial within one hundred twenty (120) days. 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 at the time of the purchase.