Rule 309 – Sourcing Certain Transactions

A. Sections 309, 310 and 311 of the Streamlined Sales and Use Tax Agreement (SSUTA) contain the general sourcing regime.

B. Rules 309.1, 309.2, 309.3, 309.4, and 309.5 describe the application of Sections 309, 310 and 311 of the SSUTA to transactions that do not require a complete street address to transfer or deliver the product to the purchaser, ~~including~~ prewritten computer software transactions, ~~to~~ computer-related services, ~~sourcing~~ software ~~post-sale support agreements~~maintenance contracts, software term licenses, and software subscriptions.

C. ~~C.~~Retail sales of software, or services with respect to such software, other than computer pre-written software, are not covered by Rules 309.1, 309.2, 309.3, 309.4, and 309.5.

D. ~~D.~~For purposes of Rules 309.1, 309.2, 309.3, 309.4, and 309.5, "location" means a geographic situs within a particular jurisdiction.

E. ~~E.~~Under Section 309 of the SSUTA, the provisions of Rules 309.1, 309.2, 309.3, 309.4, and 309.5 do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the tax jurisdiction of that use.

Rule 309.1 – Sourcing ~~Certain~~ Transactions that do not require a complete street address to transfer or deliver the product to the purchaser other than prewritten computer software, computer related services and software maintenance services

~~Sections 309, 310 and 311 of the Streamlined Sales and Use Tax Agreement (SSUTA) contain the general sourcing regime. Rules 309.1, 309.2, 309.3, 309.4, and 309.5 describe the application of Sections 309, 310 and 311 of the SSUTA to prewritten software transactions, to computer-related services, sourcing software post-sale support agreements, software term licenses, and software subscriptions. Retail sales of software, or services with respect to such software, other than computer pre-written software, are not covered by Rules 309.1, 309.2, 309.3, 309.4, and 309.5. For purposes of Rules 309.1, 309.2, 309.3, 309.4, and 309.5, "location" means a geographic situs within a particular jurisdiction. Under Section 309 of the SSUTA, the provisions of Rules 309.1, 309.2, 309.3, 309.4, and 309.5 do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the tax jurisdiction of that use.~~

A. Using the sourcing rules in Section 309 (A.3.(a))and the hierarchy outlined in Section 310 of the SSUTA, transactions that do not require a street address to transfer the product to the customer, except for prewritten computer software, services related to prewritten computer software or computer software maintenance agreements, due diligence has been exercised if the seller requests or previously obtained the purchaser's complete street address and five-digit zip code and/or the purchaser's nine-digit zip code.

1. At the time of checkout, the purchaser provides their complete street address, including five-digit zip code and the seller sources the sale to the address provided by the purchaser following Section 310 sourcing.

   Example: A seller of music that customers download to a personal electronic device asks for the purchaser's street address and zip code on the order page. The purchaser enters their complete address and zip code when the order is placed. The seller sources the sale of the

music download to the address indicated by the purchaser.

2. At the time of checkout, the purchaser provides their nine-digit zip code and the seller sources the sale using the nine-digit zip code provided by the purchaser following Section 310 sourcing.

Example: A seller of music that customers download to a personal electronic device asks for the purchaser's street address and zip code on the order page. The purchaser enters their nine-zip code when the order is placed. The seller sources the sale of the music download using the nine-digit indicated by the purchaser.

~~1.~~3. When subsections (1) and (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 business.

Example: A customer previously created a user account on the website of a seller of music. The user account requests and maintains the customer's address. When a customer returns to the website to purchase music for downloading to a personal electronic device, they use the account they created. The seller sources the sale of the music download to the address indicated in the user account.

B. Using the sourcing rules in Section 309 (A.3.(b))and the hierarchy outlined in Section 310 of the SSUTA, transactions that do not require a street address to transfer the product to the customer, except for prewritten computer software, services related to prewritten computer software or computer software maintenance agreements, states may allow the seller to use only the five-digit zip code contained in the seller's books or records or obtained from the purchaser's payment instrument to source the transaction to the state.

Example: A seller of digital games that customers download to a personal electronic device asks for the purchaser's street address and zip code on the order page. The purchaser enters their complete address and zip code when the order is placed. Using the five-digit zip code provided by the customer, the seller sources the sale of the digital game download to State M. State M is a single rate state and provides a five-digit zip code rates and boundary file. The seller has complied with the sourcing requirements in Section 309.A.3.(b).

C. For transactions that do not require a street address to transfer the product to the customer, except for prewritten computer software, services related to prewritten computer software or computer software maintenance agreements, a seller shall use the five-digit zip code contained in their books and records or obtained from the purchaser's payment instrument when a seller does not obtain or request a complete street address (Sec 309.A.4.). States are not required to provide liability relief in Section 306.

Example: A seller of digital movies that customers access for viewing ~~a~~ on a personal electronic device does not obtain or request the purchaser's street address with five-digit zip code or nine-digit zip code when making a sale. The seller uses the five-digit zip code contained in their

records or obtained with the payment instrument to source the sale. The seller is not guaranteed liability relief from a state for incorrect sourcing using the five-digit zip code.

D. A "request" for an address as stated in Section 309 (A.5.) for transactions that do not require a complete street address to transfer the product to the customer, except for prewritten computer software, services related to prewritten computer software or computer software maintenance agreements means:

1) The order page includes a section for the purchaser's street address and zip code and/or nine-digit zip code that is as prominently displayed as other information on the page. The address and zip code~~s~~ fields are not marked as being option or mandatory.

2) The order page is populated with the address associated with the purchaser's payment instrument.

Example: A customer selects music to download from a seller's webpage. When the customer enters their credit card information their address information automatically populates on the order page. The customer completes the purchase without editing the address information. The seller sources the sale of the music download to the address populated when the purchaser enters their credit card information.

3) The order page captures the purchaser's global positioning services (GPS) location.

Example: A seller of movie streaming services captures the individual customer's GPS location at the time a movie is purchased and downloaded. The seller retains the GPS location associated with each purchase in their sales records. The seller sources each sale using the GPS location captured at the time of sale.

Rule 309.2 – Sourcing Prewritten Computer Software

A. ~~A.~~ Using the hierarchy outlined in section 310 of the SSUTA, prewritten computer software is sourced as follows:

1. ~~1.~~ When prewritten computer software is received by the purchaser at ~~a business~~the business location of the seller, the retail sale is sourced to that business location.
2. ~~2.~~ When prewritten computer software is not received by the purchaser at ~~a business~~the business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs. Receipt may occur at multiple locations if the seller delivers the software to multiple locations. The transaction is sourced to those locations if the seller receives delivery information from the purchaser by the time of the invoice.

Example 1: Seller ships multiple hard copies of prewritten computer software to multiple locations of the Purchaser. The retail sale is sourced to those locations indicated by the instructions for delivery to each jurisdiction in which the Purchaser receives the prewritten computer software.

Example 2: Seller electronically delivers copies of the prewritten computer software to multiple locations of the Purchaser. The Seller has the information identifying the multiple locations for the electronic delivery of the prewritten computer software. The Seller sources the retail sale to each jurisdiction where the Purchaser receives the prewritten computer software.

Example 3: Seller electronically delivers prewritten computer software to the Purchaser's server in State A. The Seller has information identifying the location of the server in State A. Purchaser subsequently downloads copies of the prewritten computer software to its multiple locations. The Seller sources the retail sale to the jurisdiction where the Purchaser receives the prewritten computer software, at the location of the server in State A. Seller has no responsibility to source the retail sale to any other state.

Example 4: Purchaser headquartered in State A also has locations in States B and C. The Seller electronically delivers prewritten computer software to the Purchaser's server located in State B. The Seller has information identifying all of these locations. The Purchaser's prewritten computer software will be accessed by its employees in all three states. The Seller sources the retail sale to the jurisdiction where the Purchaser receives the prewritten computer software, at the location of the server in State B. Seller has no responsibility to source the retail sale to any other state.

B. ~~B.~~ When subsection~~s~~ A. ~~(1) and (2)~~ of this rule do~~es~~ not apply, the retail 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 business when use of this address does not constitute bad faith.

Example 1: Seller electronically delivers prewritten computer software to an unknown location(s) of the Purchaser. The Seller has information identifying an address that is maintained in the Seller's files for business purposes. The Seller sources the retail sale to the jurisdiction for the address of the business location of the Purchaser available in the Seller's business records.

C. ~~C.~~ When subsections A. ~~(1), and (2),~~ and ~~(3)~~B of this rule do not apply, the retail sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the retail sale, including the address of a purchaser's payment instrument if no other address is available when this address does not constitute bad faith.

Example ~~1~~: The Seller makes retail sales of prewritten computer software by allowing Purchasers to electronically download the prewritten computer software from Seller's website. In connection with the retail sale, the Purchaser discloses an address associated with the credit card used to pay for the prewritten computer software. This is the only location information the Seller receives from the Purchaser in connection with the retail sale. The Seller sources the retail sale to the jurisdiction of the address for the Purchaser associated with the credit card payment.

D. ~~D.~~ When neither subsections A. ~~(1), (2),~~ B. ~~(3)~~, or ~~(4)~~C. ~~-~~of this rule apply, including circumstances in which the seller is without sufficient information to apply subsections ~~(1), (2), (3), or (4)~~A, B or C of this rule, ~~then~~ the retail sale is sourced to the jurisdiction for the address of the location from which the prewritten computer software was shipped or, if delivered electronically, was first available for

transmission by the seller. "First available for transmission" means the location from which the software originated, irrespective of where it is routed, including intermediary servers.

Rule 309.3 – Sourcing Computer-Related Services

A. A retail sale of a computer-related service (hereinafter a "service") is sourced where the purchaser receives the service. "Receipt" is defined in Section 311 of the SSUTA to mean where the purchaser makes first use of the service. The purchaser may make first use of a service in more than one location.

1. If the purchaser receives the service at ~~a~~ the business location of the seller, the retail sale is sourced to that business location of the seller.

Example 1: A Purchaser drops off two of its computers at a Seller's location for the purpose of having data recovered from one computer and transferred to the second computer. Upon the completion of the service, the Purchaser picks up the computers at the Seller's location. The retail sale of the service is sourced to the Seller's location.

2. When the service is not received by the purchaser at ~~a business~~the business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs.
3. If ~~the service is received by the purchaser~~the purchaser receives the service exclusively at one or more locations of the purchaser and the amount of the service received by the purchaser at each location is known by the seller, the retail sale is sourced to those locations.

Example 1: A Purchaser receives computer services at the Purchaser's location. The retail sale of computer services is sourced to the Purchaser's location.

Example 2: Seller sends computer repair personnel to two of Purchaser's locations to perform data recovery services in States A and B. Seller bills Purchaser at an hourly rate for the work performed by its employee. The Seller's employee tracks ~~its~~their time based on the work performed at each location. The Seller shall source the retail sale to States A and B in accordance with the time spent at each location.

Example 3: Purchaser, with a single location in State A, accesses, but does not license, software located on Seller's server located in State B, which is characterized in both States A and B as a computer-related service. The Seller knows that the Purchaser makes first use of this service at its location in State A. Seller sources the transaction to State A.

B. 1. If receipt occurs in multiple locations and the purchaser and seller agree to allocate the retail sale to multiple locations based on a reasonable and consistent method, the seller shall source the retail sale to those locations using such method. **The locations and allocation must be provided by the purchaser by the time of the invoice.**

Example ~~1~~: Purchaser, headquartered in State A, and Seller enter into a data processing services agreement. Under the agreement, Seller will conduct the data processing services from its facility located in State P. Purchaser has employees evenly distributed in States A, B, C, and D who will be accessing Seller's facility remotely using a communications network and making use of Seller's data processing services. Purchaser requests that Seller's invoice reflect the fact that it will be receiving the data processing services equally in States A, B, C, and D. Seller agrees to

the Purchaser's request and sources the transaction between the four states where the Purchaser will be receiving the services. Seller has satisfied its responsibility for sourcing the transaction under Section 310(A)(2).

2. If the seller does not receive information as to the location(s) where the service will be received by the purchaser or the purchaser and seller do not agree, the seller shall source the retail sale to a single location in accordance with subsection ~~(3~~C.~~)~~, below.

Example ~~1~~: Purchaser is located in States A, B, C, and D. Purchaser and Seller enter into a data processing services agreement. Under the agreement, Seller will conduct the data processing services from its facility located in State P. Purchaser's employees in States A, B, C, and D will be accessing Seller's facility remotely using a communications network and making use of Seller's data processing services, but this information is not provided to the Seller. Seller sends the invoice to Purchaser in State A. Seller sources the transaction to State A. Seller has no responsibility for sourcing the transaction to any other state.

C. ~~(3)~~ When subsections ~~(1)~~A. and ~~(2)~~B. of this rule do not apply, the retail 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 business when use of this address does not constitute bad faith.

Example ~~1~~: Purchaser accesses software located on the Seller's server from an unknown location. Seller's server is located in State A. The Seller has business records that identify the Purchaser's address as State B. The retail sale of access services is sourced to State B, where the Purchaser receives the service.

D. ~~(4)~~ When subsections ~~(1)~~,A., ~~(2)~~B., and ~~(3)~~C. of this rule do not apply, the retail sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the retail sale, including the address of a purchaser's payment instrument, if no other address is available, when this address does not constitute bad faith.

E. ~~(5)~~ When ~~neither~~ subsections ~~(1)~~A., ~~(2~~B. ~~)~~, ~~(3)~~C., or ~~(4)~~D. of this rule do not apply, including circumstances in which the seller is without sufficient information to apply subsections ~~(1)~~A., ~~(2)~~B., ~~(3)~~C., or ~~(4)~~D. of this rule, then the location is determined by the address from which the service was provided.

Rule 309.4 – Sourcing Computer Software Maintenance Contracts

A. ~~(1)~~ The initial retail sale of a computer software maintenance contract sold by the seller of the software is sourced to the same address(es) as the retail sale of the underlying software.

B. ~~(2)~~ ~~(a)~~ 1.The retail sale of a computer software maintenance contract sold after the retail sale of the underlying software, the renewal of a computer software maintenance contract, or the retail sale of a computer software maintenance contract by a seller other than the seller of the software is treated separately from the retail sale of the underlying software and shall be sourced in accordance with Section 310(A) of the SSUTA.

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~~(b)~~2.Where Section 310(A)(1) and (2) of the SSUTA do not apply, sourcing a retail sale of a renewal of a computer software maintenance contract to an address where the purchaser received the underlying software will not constitute bad faith so long as the seller has not received information from the purchaser indicating a change in the location of the underlying software.

Rule 309.5 – Sourcing Software Term License and Subscriptions

A. ~~(1)~~ **Definitions:** As used in this section
   1. ~~(a)~~ the term "software subscription" means a transaction requiring additional payments for updates to prewritten computer software and
   2. ~~(b)~~ the term "software term license" means a transaction where the purchaser's right to continue to use prewritten software is dependent on periodic payment.

B. ~~(2)~~ **Initial Payments:** Initial payments made in connection with a software term license or subscription shall be sourced in accordance with Section 310A of the SSUTA.

   Example 1: Seller electronically delivers to Purchaser a copy of prewritten computer software on a subscription basis. The software is a product designed to detect online threats. In order to remain effective, the software must be constantly updated with new threat definitions. The subscription provides the Purchaser with electronically delivered updates for a one year period. The Purchaser may renew the subscription annually. The Seller has no information as to the location where the software was electronically delivered. However, the Purchase Order discloses a "ship to" address. Seller sources the sale to the "ship to" address shown on the Purchase Order as such address constitutes a "location indicated by instructions for delivery to the purchaser" under Section 310A(2).

   Example 2: Same facts as in Example 1 except the Purchaser is a consumer who downloads the software from the Internet and uses a credit card to pay for the software and the subscription to the updates. During the consummation of the sale, seller receives no information regarding the location to which the software and the subscription will be delivered, but does receive the Purchaser's credit card billing address. Seller sources the transaction to the Purchaser's credit card billing address because it is a location indicated by an address for the purchaser obtained during the consummation of the sale under Section 310A(4) and because the Seller has no delivery or other address in its business records that would permit sourcing under either Section 310A(2) or (3).

   Example 3: Seller delivers to purchaser a copy of prewritten computer software. The license is for a 1-year period and requires the purchaser to make payments to renew the license. If the purchaser does not make an annual payment, the purchaser must terminate use of the software and the software may cease to function. Seller ships the software on a disk to purchaser in State A. Seller sources the initial license payment to State A, the location to which it shipped the software, as determined under Section 310A (2).

C. ~~(3)~~ **Subsequent payments:** The following rules apply if the seller sourced the initial payment under Section 310A (2):
   1. ~~(a)~~ If the seller receives information from the purchaser indicating that the location of the underlying software has changed, a subsequent payment made in connection with a software term license or renewal of a software subscription shall be sourced to such new location.

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2. ~~(b)~~ If the seller has not received information from the purchaser indicating a change in the location of the underlying software, sourcing a subsequent license payment made in connection with a software term license or the renewal of a software subscription to the same location where the initial payment was sourced will not constitute bad faith.

Example ~~4~~1: Seller electronically delivers to Purchaser a copy of prewritten computer software on a subscription basis. The software is a product designed to detect online threats. In order to remain effective, the software must be constantly updated with new threat definitions. The subscription provides the Purchaser with electronically delivered updates for a one-year period. The Purchaser may renew the subscription annually. The Seller has no information as to the location where the software was electronically delivered. However, the Purchase Order discloses a "ship to" address. ~~Same facts as in Example 1, above, except the~~The Purchaser renews the software subscription for a second year. The Purchase Order for the renewal discloses a different "ship to" address than the Purchase Order for the initial sale of the subscription. The different "ship to" location on the renewal Purchase Order constitutes the receipt by the Seller of information indicating that the location of the underlying software has changed. Seller sources the renewal to the new address.

Example ~~5~~2: Same facts as in Example ~~4~~1 except that the Purchase Order for the renewal discloses a different "bill to" address than the Purchase Order for the initial sale of the subscription. The "ship to" address on the Purchase order remains the same. A change in the "bill to" address on the Purchase Order does not constitute the receipt of information from the purchaser indicating that the location of the underlying software has changed. The Seller sources the renewal payment to the same location as the initial payment.

Example ~~6~~3: Same facts as in ~~e~~Example 2 except that the Purchaser has moved and has a new credit card billing address. The Purchaser uses the credit card and the new address when renewing the software subscription for a second year. In the interim, Seller has received no information concerning the location of the software. Because the initial payment was not sourced under Section 310A(2), Seller's use of the new credit card address for sourcing the renewal payment would not constitute bad faith under Section 310A(4).

Example ~~7~~4: Same facts as in Example 3, except that after the software copy was delivered to purchaser in State A, the purchaser installs the software on a computer located in State B. Seller never receives any information that the software is located in any state other than the one to which it originally shipped it. Purchaser renews the license at the end of the first year and seller sources the renewal payment to State A. Because seller has not received any information indicating that the location of the software has changed, Seller's sourcing of the license renewal payment to State A does not constitute bad faith.

Example ~~8~~5: Seller sells to purchaser prewritten computer software under a perpetual license for $3 million. Seller agrees to finance the license fee over a 3-year period under which the purchaser will make three equal annual payments. Seller sends purchaser an invoice that includes the first annual payment plus 100 percent of the sales tax due on the transaction. Seller thus collects and remits all of the tax due with respect to the transaction at the time of the sale. The subsequent payments are not made in connection with a software term license or subscription within the meaning of Rule 309.5(2) and no sourcing is necessary.