

Reg. IV.17. Sales Factor: Sales Other Than Sales of Tangible Personal Property in This State

4. Sale of a Service.

a. General Rule. The sale of a service is in this state if and to the extent that the service is delivered at a location in this state. In general, the term “delivered” shall be construed to refer to the location of the taxpayer’s market for the service provided and is not to be construed by reference to the location of the property or payroll of the taxpayer as otherwise determined for corporate apportionment purposes pursuant to Article IV(10)-(14) of the Compact.

i. Except as provided in rules adopted pursuant to Section 18 or by state statute the rules to determine the location of the delivery of a service are set forth at 4.b-d.

ii. In any instance where the state to which the sale is to be assigned can be determined or reasonably approximated pursuant to 4.b-d., but the taxpayer is not taxable in such state, the sale that would otherwise be assigned to such state shall be excluded from the numerator and denominator of the taxpayer’s sales factor.

b. Delivery by Physical Means. Services delivered to a customer or on behalf of a customer through a physical means shall be assigned to a state pursuant to the following rules

i. In Person Service. In-person services are services that are physically provided in person by the taxpayer, where the customer, or the customer’s real or tangible property upon which the services are performed, is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor.

A. where the service provided by the taxpayer is an in-person service, the delivery of the service is at the location where the service is received. Therefore, the sale is in this state if and to the extent the customer receives the in-person service in this state. In assigning its sales of in-person services, a taxpayer shall first attempt to determine the location where a service is received, as follows:

(A) Where the service is performed with respect to the body of an individual customer in this state (e.g. hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g. live entertainment or athletic performances), the service is received in this state.

(B) Where the service is performed with respect to the customer’s real estate in this state or where the service is performed with respect to the customer’s tangible personal property at the customer’s residence or in the customer’s possession in this state, the service is received in this state.

(C) Where the service is performed with respect to the customer’s tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed in this state or

Comment [BM1]: From Bruce’s b.ii.C2nd paragraph

outside this state, the service is received in this state if such property is shipped or delivered to the customer in this state.

(D) In any instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states.

Comment [BM2]: From Bruce's b.ii.C.2nd paragraph

B. Where the service provided by the taxpayer is not an in-person service within the meaning of 4.b.A and the service is physically delivered to or on behalf of the customer the sale is in this state if and to the extent that the service is delivered in this state.

Comment [BM3]: From Bruce's C.1.

1. In assigning the sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where such services are delivered. Where the taxpayer is able to determine the state or states where the service is delivered, it shall assign the sale to such state or states.
2. Where the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate such state or states.

c. Delivery to a Customer by Electronic Transmission. The rule of assignment for delivery by electronic means depends on whether the customer is an individual or a business customer. If the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. Services delivered by electronic transmission to a customer, the following rules apply.

Comment [BM4]: From Bruce's c.ii.2.B

Comment [BM5]: From d.ii.

1. Services Delivered By Electronic Transmission to an Individual Customer.
 - a. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the sale to such state or states.
 - b. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate such state or states.
 - c. Where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in

which the service is received, it shall assign the sale to the state of the customer's billing address.

2. Services Delivered By Electronic Transmission to a Business Customer

- a. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the sale to such state or states. For purposes of this section, 4.c.ii(B)2, it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.
- b. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate such state or states.
- c. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, such state or states shall be assigned as follows:
 - 1) by assigning the sale to the state where the contract of sale is principally managed by the customer; In any instance in which the taxpayer derives more than 5% of its sales of services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.
 - 2) if the state where the customer principally manages the contract is not reasonably determinable, by assigning the sale to the customer's place of order; and
 - 3) if the customer's place of order is not reasonably determinable, by assigning the sale using the customer's billing address. ;

3) Services Delivered Electronically Through or on Behalf of an Individual or Business Customer. Services delivered electronically to third-party recipients "on behalf of" the customer are services that are delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

1. Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in this state if and to the extent that the end users or other third-party recipients are in this state. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in this state to the extent that the end users or other third-party recipients receive such services in this state. The rules in this subsection 4.c.ii(C) apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.
2. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate such state or states.
3. Where a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling such service to end users or other third-party recipients the sales shall be assigned to the state of the end user or other third party recipients. If the taxpayer lacks sufficient information regarding the location of the end users or other third-party recipients from which it can determine or reasonably approximate such location, the taxpayer shall approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells such services, relative to the total population in such area.
4. Sale of Advertising. In the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in this state to the extent that the audience for such advertising is in this state. Where a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in such area. For a taxpayer with less information about its audience, the taxpayer shall approximate the audience in a state using the percentage that reflects the ratio of the state's population in the

specific geographic area in which the advertising is delivered relative to the total population in such area.

d. Professional Services.

i. In General. Professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. Professional services other than those that significantly involve or require in-person contact are “in-person services” within the meaning of 4.b, and are assigned under the rules of 4.b, shall be assigned pursuant to this subsection d. Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. However, in such cases, despite this transmission, the assignment rules that apply are those set forth in this section, 4.d, and not those set forth in 4.c, pertaining to services delivered to a customer or through or on behalf of a customer.

Comment [BM6]: Limits the application of d.

ii. Assignment of Sales. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. For purposes of consistent application of the market sourcing rule stated in Section 17 must be approximated. The assignment of a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the sale of a professional service, a taxpayer’s customer is the person who contracts for such service, irrespective of whether another person pays for or also benefits from the taxpayer’s services.

(A) General Rule. Sales of professional services other than those services described in are assigned as follows:

1. Professional Services Delivered to Individual Customers. Except as otherwise provided, in any instance in which the service provided is a professional service and the taxpayer’s customer is an individual customer, the state or states in which the service is delivered shall be deemed to be
 - a. the customer’s state of primary residence, or,
 - b. if the taxpayer cannot reasonably identify the customer’s state of primary residence, to the state of the customer’s billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its sales of services from an individual customer, the taxpayer is required to identify the customer’s state of primary residence and must assign the receipts from the service or services provided to that customer to that state.
2. Professional Services Delivered to Business Customers. Except as otherwise provided in any instance in which the service provided is a professional service and the taxpayer’s customer is a business customer taxpayer shall assign the sale as follows:

- a. by assigning the receipts to the state where the contract of sale is principally managed by the customer. In any instance in which the taxpayer derives more than 5% of its sales of services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer
- b. if such place of customer management is not reasonably determinable, to the customer's place of order; and
- c. if such customer place of order is not reasonably determinable, to the customer's billing address;