

EXAMPLES ELECTRONIC DELIVERY

Example 4. Retail Corp, a corporation that is based outside of this state, sells tangible property through its retail stores located in this state and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. **Retail Corp. pays Answer Co. for the service Answer Co. provides.**

Answer Co. ~~In this case, the phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co~~ is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and **Answer Co.** must assign the proceeds from this service to the state or states from which the phone calls are placed by such customers or prospective customers.

If Answer Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate such locations, Answer Co must approximate the amount of its ~~this state sales~~ **in this state** by multiplying the amount of its fee from Retail Corp by a percentage that reflects the ~~this state's~~ population in the specific geographic area from which the calls are placed relative to the total population in such area. See 4.c.i; 4.c.ii(C).

Answer Co's sales shall ~~also~~ be excluded from the numerator and denominator of its sales factor in any case in which such sales would be assigned to a state in which Answer Co is not taxable. See 1.f.ii.

Example 5. Web Corp, a corporation that is based outside of this state, sells tangible property to customers via its Internet website. Design Co designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site.

The receipts Design Co's **receives from the** services **that** are delivered to Web Corp, ~~the proceeds from which~~ are assigned pursuant to 4.c.ii(B)**(2) to the state where the contract is principally managed by Web Corp.** The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co's services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

Example 6. Wholesale Corp, a corporation that is based outside this state, develops an Internet-based information database outside this state and enters into a contract with Retail Corp whereby **it pays** Retail Corp ~~will~~ **to** market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both. Assume that on the particular facts applicable in this example Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction.

For purposes of the assignment of sales for ~~In this case,~~ Wholesale Corp's services, **the services** are being delivered through Retail Corp to the end user. Wholesale Corp must assign its **such** sales ~~to Retail Corp~~ to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate such location, Wholesale Corp must approximate the extent to which its services are received by end users in this state by using a percentage that reflects the ratio of ~~the~~ this state population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in such area. See 4.c.ii(C)3.ii. Note that it does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both. See 5.e. In any case in which Wholesale Corp's sales would be assigned to a state in which Wholesale Corp is not taxable, such sales shall be excluded from the numerator and denominator of Wholesale Corp's sales factor. See 1.f.ii.

For purposes of the assignment of sales for Retail Corp. its services are being delivered to the end user. Retail Corp. must assign its such sales to the state or states in which the end users receive access to Wholesale Corp's database. If Retail Corp. cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate such location, Retail Corp. must approximate the extent to which its services are received by end users in this state by using a percentage that reflects the ratio of this state population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in such area. See 4.c.ii(C)3.ii.