

# Sourcing Digital Sales

Is Federal Legislation a Solution?

MTC Uniformity Committee

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# Mobile Telecommunications Sourcing Act

Public Law 106-252

Signed by President Clinton on July 28, 2000

Application of the Act – Applies to customer bills issued after August 1, 2002

## Development of the Mobile Telecommunications Sourcing Act

- **Industry developed proposal presented to New York Department of Taxation and Finance**
- **New York brought issue to MultiState Tax Commission and Federation of Tax Administrators to develop Federal Legislation**
- **Coordinated industry and State effort to develop the legislation, which was endorsed by NCSL and jointly sought enactment of the federal legislation.**

## Sourcing:

### § 117 Sourcing rules

Notwithstanding the law of any State or political subdivision of any State, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, **shall be deemed to be provided by the customer's home service provider.**

All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider...**are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use**, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

## Sourcing:

### § 122 Determination of Place of Primary Use

A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use ..., and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall—

- (1) allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer; and
- (2) not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.

## Definition of Place of Primary Use

The term ‘place of primary use’ means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, which must be—

- (A) the residential street address or the primary business street address of the customer; and
- (B) within the licensed service area of the home service provider.

# DIGITAL GOODS AND SERVICES TAX FAIRNESS ACT

HR 1725 (Rep. Cohen-Judiciary) and S 765 (Sen. Thune-Finance) 116<sup>th</sup> Cong. 2019

HR 7058 (Rep. Smith-Judiciary) S 3581 (Sen. Thune-Finance) 115<sup>th</sup> Cong., 2018

The slide features a decorative background with several curved lines in shades of grey and teal. A prominent teal rectangular box is positioned on the left side, containing the title text. The text is white and centered within the box. To the right of the teal box, there is a bulleted list of key points in black text.

Development of  
Digital Goods and  
Services Tax  
Fairness Act

- **Effort Coordinated by the National Governor's Associations**
- **Participants:**
  - **Multistate Tax Commission**
  - **Streamlined Sales Tax**
  - **National Conference of State Legislators**
  - **Individual States: Utah, Washington**
  - **Broad range of companies and practitioners**

## Definitions of Digital Good and Digital Service

- Sec. 7(7) The term “digital good” means any software or other good that is delivered or transferred electronically, ....where such software or other good is the true object of the transaction, **...that results in the delivery to the customer of a complete copy of such software or other good**, with the right to use permanently or for a specified period...
- Sec. 7(8) The term “digital service” means any service that is provided electronically, including the provision of remote access to or use of a digital good .....

# Definitions

Put the two definitions together and the results are:

Everything transferred electronically is the provision of a digital service, unless

The customer receives a complete copy of the digital good for use permanently or for a specified period.

## Sourcing

### SSUTA Default Sourcing Rule:

#### Sec. 310.A.5:

- 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).

## Sourcing

SSUTA Sourcing Issue Paper (Jan. 17, 2002):

The origin of a sale of digital goods is the address from which the digital good was first available for transmission by the seller. **It is assumed that, at some point, a digital good is available to be transmitted by the seller on its way to the purchaser, and that the seller will know the address at which that availability for transmission occurs. That is the address to which the sale is sourced, with earlier or later transmissions being disregarded.** We intend to disregard with this rule “ghost servers.” Consistent with all the rules above, this rule focuses on information reasonably available to the seller at the time of the sale.

## Sourcing

### Digital Goods and Services Tax Fairness Act Default Sourcing Rule:

#### Sec. 7(4)(vi):

(vi) if none of clauses (i) through (v) applies, including the circumstance in which the seller is without sufficient information to apply such paragraphs, one of the following locations, as selected by the seller, provided that such location is consistently used by the seller for all such sales to which this clause applies:

(I) The location in the United States of the headquarters of the seller's business.

(II) The location in the United States where the seller has the greatest number of employees.

(III) The location in the United States—

(aa) from which the seller makes digital goods available for electronic delivery; or

(bb) from which digital services, VoIP services, or audio or video programming services are provided electronically.

## Sourcing

When does the default sourcing rule apply?

Buyer uses 3<sup>rd</sup> party payment service (e.g., PayPal) that does not provide the seller with any location information about the buyer.

Only applies to digital goods because a seller of physical goods must have a delivery address that will suffice for sourcing purposes.



## Sourcing

SST default rule was developed in 2002, before the rise of data centers

Sellers of digital goods may not know which data center provided a particular download.

Digital goods bill provides concrete sourcing locations easy to administer by sellers and audit by tax authorities.





Questions

