

297A.668 SOURCING OF SALE; SITUS IN THIS STATE.

Subdivision 1. **Applicability.** The provisions of this section apply regardless of the characterization of a product as tangible personal property, a digital good, or a service; but do not apply to telecommunications services or the sales of motor vehicles. These provisions 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 sale of a product. These provisions do not affect the obligation of a seller as purchaser to remit tax on the use of the product.

Subd. 2. **Sourcing rules.** (a) The retail sale, excluding lease or rental, of a product shall be sourced as required in paragraphs (b) through (f).

(b) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(c) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the donee designated by the purchaser occurs, including the location indicated by instructions for delivery to the purchasers or the purchaser's donee, known to the seller.

(d) When paragraphs (b) and (c) 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 the seller's business, when use of this address does not constitute bad faith.

(e) When paragraphs (b), (c), and (d) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument if no other address is available, when use of this address does not constitute bad faith.

(f) When paragraphs (b), (c), (d), and (e) do not apply, including the circumstance where the seller is without sufficient information to apply the previous paragraphs, then the location is 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. For purposes of this paragraph, the seller must disregard any location that merely provided the digital transfer of the product sold.

(g) For purposes of this subdivision, the terms "receive" and "receipt" mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods or the computer software delivered electronically, whichever occurs first. The terms receive and receipt do not include possession by a carrier for hire on behalf of the purchaser.

Subd. 3. **Lease or rental of tangible personal property.** The lease or rental of tangible personal property, other than property identified in subdivision 4 or 5, shall be sourced as required in paragraphs (a) to (c).

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subdivision 2. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location must be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location must not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subdivision 2.

(c) This subdivision does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

Subd. 4. **Lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment.** The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subdivision 5, shall be sourced as required in paragraphs (a) to (c).

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location must be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location must not be altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subdivision 2.

(c) This subdivision does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

Subd. 5. **Transportation equipment.** (a) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subdivision 2, notwithstanding the exclusion of lease or rental in subdivision 2.

(b) "Transportation equipment" means any of the following:

(1) locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(2) trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semitrailers, or passenger buses that are:

(i) registered through the international registration plan; and

(ii) operated under authority of a carrier authorized and certified by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(3) aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate commerce; or

(4) containers designed for use on and component parts attached or secured on the transportation equipment described in clauses (1) through (3).

Subd. 6. [Repealed, 2008 c 154 art 12 s 41]

Subd. 7. **Direct mail.** (a) Notwithstanding other subdivisions of this section, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller, in conjunction with the purchase, either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

(1) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form remains in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(2) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by paragraph (a), the seller shall collect the tax according to subdivision 2, paragraph (f). Nothing in this paragraph limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser is not required to provide a direct mail form or delivery information to the seller.

Subd. 8. Manufactured and modular housing. (a) Notwithstanding other subdivisions of this section, a sale of a manufactured or modular home shall be sourced to the site where the housing is first set up or installed.

(b) For purposes of this section, "manufactured home" has the meaning given in section 327.31, subdivision 6. For purposes of this section, "modular home" means a building or structural unit that has been substantially manufactured or constructed, in whole or in part, at an off-site location, with the final assembly occurring on-site alone or with other units and attached to a permanent foundation site and occupied as a single-family dwelling. Modular home construction must comply with applicable standards adopted in Minnesota Rules authorized under chapter 16B. A modular home does not include a structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974 or a manufactured home.

History: *1Sp2001 c 5 art 12 s 35; 2002 c 379 art 1 s 68; 2003 c 127 art 1 s 19; 2004 c 228 art 1 s 49; 2005 c 151 art 7 s 9,10; 2006 c 259 art 6 s 9; 2008 c 154 art 5 s 1*