

Sourcing of Sales

The sourcing of sales is a very important determination to be made when sales are made in interstate commerce. In 2004, the Michigan legislature inserted a new section 19 into the Sales tax Act to provide clear rules for the sourcing of sales. (MCL 205.69)

General Rule

Section 19 of the Sales Tax Act provides rules for the sourcing of a sale at retail. The following apply:

If a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location. (MCL 205.69(1)(a))

If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by instructions for delivery to the purchaser, known to the seller. (MCL 205.69(1)(b))

If neither of the above apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith. (MCL 205.69(1)(c))

If none of the above apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith. (MCL 205.69(1)(D))

If all of the above do not apply or the seller has insufficient information to apply all of the above, the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which the computer software delivered electronically was first available for transmission by the seller. (MCL 205.69(1)(e))

Lease or Rental of Tangible Personal Property

The sourcing rules for the lease or rental of tangible personal property other than vehicles and transportation equipment are as follows: (MCL 205.69(2))

For a lease or rental requiring recurring periodic payments, the first payment is sourced in the same manner provided for a retail sale. Subsequent payments shall be sourced to the primary property location for each period covered by the payment as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at different locations such as business property that accompanies employees on business trips or service calls. (MCL 205.69(2)(a))

For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a retail sale. (MCL 205.69(2)(b))

Lease or Rental of Vehicles, Trailers, Semitrailers or Aircraft

The sourcing rules for the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that are not transportation equipment are as follows: (MCL 205.69(3))

For a lease or rental requiring recurring periodic payments, each payment is sourced to the primary property location as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at a different location. (MCL 205.69(3)(a))

For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a retail sale in subsection (1). (MCL 205.69(3)(b))

Lease or Rental of Transportation Equipment

The lease or rental of transportation equipment shall be sourced in the same manner provided for a retail sale. (MCL 205.69(4))

The sourcing rules for rentals of tangible personal property and vehicles do not affect the imposition or computation of sales tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease. (MCL 205.69(5))

Section 19, Paragraph 6 includes definitions to be used in applying the sourcing rules: (MCL 205.69(6))

(a) "Receive" and "receipt" mean 1 or more of the following but exclude possession by a shipping company on behalf of the purchaser:

(i) Taking possession of tangible personal property.

(ii) Making first use of services.

(b) "Transportation equipment" means 1 or more of the following:

(i) Locomotives and railcars utilized for the carriage of persons or property in interstate commerce.

(ii) Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses, which are registered through the international registration plan and operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(iii) Aircraft operated by air carriers authorized and certificated by the United States department of transportation or other federal or foreign authority to transport air cargo or passengers in interstate or foreign commerce.

(iv) Containers designed for use on or component parts attached or secured to the equipment included in subparagraphs (i) to (iii).

A seller may deviate from the sourcing requirements under Section 19, as provided in Section 20 pertaining to electronically delivered computer software or Section 21 pertaining to direct mail. (MCL 205.69(7))

Electronically Delivered Software

A business purchaser, other than a holder of a direct pay permit, at the time of its purchase of electronically delivered computer software, knows that the electronically delivered computer software will be concurrently available for use in more than one taxing jurisdiction shall deliver to the seller at the time of purchase an MPU exemption form. (MCL 205.70(1)) An "MPU exemption form" means a multiple points of use exemption form. (MCL 205.70(6))

Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser is then obligated to pay the applicable tax on a direct pay basis. (MCL 205.70(2))

A purchaser who delivers an MPU exemption form may use any reasonable, consistent, and uniform method of apportionment of the tax supported by the purchaser's business records as they exist at the time of consummation of the sale. (MCL 205.70(3))

The MPU exemption form remains in effect for all subsequent sales of electronically delivered computer software by the seller to the purchaser until revoked in writing. However, the apportionment may change based on the business records as they exist at the time of each subsequent sale. (MCL 205.70(4))

A business purchaser that is a holder of a direct pay permit is not required to deliver an MPU exemption form to the seller but shall apportion the tax on electronically delivered computer software using any reasonable, consistent, and uniform method supported by the purchaser's business records as they exist at the time of consummation of the sale. (MCL 205.70(5))

Direct Mail

A purchaser of direct mail, other than a holder of a direct pay permit, shall provide to the seller at the time of purchase either a direct mail form or information indicating the taxing jurisdictions to which the direct mail is delivered to recipients. (MCL 205.71(1)) Upon receipt of the direct mail form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser is then obligated to pay the applicable tax on a direct pay basis. (MCL 205.71(2))

A direct mail form remains in effect for all subsequent sales of direct mail by the seller to the purchaser until revoked in writing. (MCL 205.71(3))

Upon receipt of information from the purchaser indicating the taxing jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to that delivery information. In the absence of bad faith, the seller is relieved of any further obligation to collect the tax if the seller collected the tax using the delivery information provided by the purchaser. (MCL 205.71(4))

If the purchaser does not have a direct pay permit and does not provide the seller with a direct mail form or delivery information, the seller shall collect the tax in the same manner using the sourcing rules as provided in Section 19. Nothing in this subsection limits a purchaser's obligation for the tax under this act. (MCL 205.71(5))

A purchaser who provides the seller with documentation of a direct pay permit is not required to provide a direct mail form or delivery information. (MCL 205.71(6))

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