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### STREAMLINED SALES TAX PROJECT SSUT AGREEMENT SECTION ANALYSIS

### STATE OF CALIFORNIA BOARD OF GOVERNANCE

**Section:** 311 (Exhibit I provides the complete language of Section 311 of the Streamlined Sales and Use Tax Agreement (SSUTA))

**Title:** General Sourcing Definitions

#### Summary

Section 311 of the SSUTA provides general sourcing definitions for the terms “receive” and “receipt.” These definitions are relevant only for the purposes of SSUTA Section 310, subsection (A), as they relate to sourcing the retail sale of tangible personal property, services, or digital goods (Exhibit II provides the complete language of Section 310 of the SSUTA). Conforming to Section 311 would not impact or require a change to California’s Revenue and Taxation Code Sections (Statutes) or Regulations as they pertain to the terms “receive” and “receipt” and the sale of tangible personal property.

#### Description

Section 311, defines terms specific to SSUTA Section 310, subsection (A), for the purpose of sourcing the retail sale of a product, which includes tangible personal property, digital goods, and services. The general sourcing rules of Section 310 determine the place of sale and, therefore, which jurisdiction is entitled to the tax generated from the retail sale of the product. The SSUTA adopts a destination-based sourcing method that considers the place where the purchaser receives the property, digital goods, or service to be the place of sale. The general sourcing rules provided in Section 310 and the general sourcing definitions provided in Sections 311 apply only after it is determined a taxable transaction has occurred. The provisions of Section 310 and Section 311 do not determine whether a sale occurred or whether use tax rather than sales tax applies to the transaction.

SSUTA Section 311 provides:

For the purposes of SSUTA Section 310, subsection (A), the terms “receive” and “receipt” mean:

- A. Taking possession of tangible personal property,
- B. Making first use of services, or
- C. Taking possession or making first use of digital goods, whichever comes first.

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The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser.

SSUTA Section 310 provides, in pertinent part, that:

A. Retail sales, excluding leases or rentals, of a product shall be sourced as follows:

1. When the product is **received** (emphasis added) by the purchaser at the seller’s business location, the sale is sourced to that business location.
2. When the product is not received by the purchaser at the seller’s business location, the sale is sourced to the location where **receipt** (emphasis added) by the purchaser occurs, including the location indicated by delivery instructions known to the seller.
3. When (1) and (2) do not apply, the sale is sourced to the location indicated by the address for the purchaser that is available in the seller’s records.
4. When (1), (2) and (3) 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 the purchaser’s payment instrument, if no other address is available.
5. When none of the previous rules apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which the product was shipped.

### **Related SSUTA Sections**

Section 309: Application of General Sourcing Rules and Exclusions from the Rules

Section 310: General Sourcing Rules

Section 313: Direct Mail Sourcing

Section 314: Telecommunication Sourcing Rule

Section 315: Telecommunication Sourcing Definitions

### **Related California Revenue and Taxation Code Sections and Regulations**

Section 6006            Sale

Section 6010.5        Place of sale

Section 7205            Place of sale

Section 7205.1        Place of sale: leases of motor vehicles

Section 7263            Place of sale

Regulation 1502        Computers, Programs, and Data Processing

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Regulation 1566	Automobile Dealers and Salesmen
Regulation 1610	Vehicles, Vessels, and Aircraft
Regulation 1620	Interstate and Foreign Commerce
Regulation 1655	Returns, Defects, and Replacements
Regulation 1670	Gifts, Marketing Aids, Premiums, and Prizes
Regulation 1802	Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes
Regulation 1822	Place of Sale for Purposes of Transactions (Sales) and Use Taxes

### **Evaluation**

Under SSUTA Section 311 “receive” and “receipt” means the taking of possession of tangible personal property. The terms receive and receipt are also defined as “making first use of services” or “taking possession or making first use of digital goods.” Although at this point the SSUTA has not specifically defined “digital goods,” the term is currently understood to mean goods transferred electronically or in an intangible manner. Since California generally does not impose a tax on services or the transfer of intangible goods, conforming to SSUTA Section 311 would be relevant only in regard to the sourcing of retail sales of tangible personal property.

Under SSUTA Section 310, subsection (A), when the purchaser takes possession of tangible personal property (receives the property) at the business location of the seller, the sale is sourced to that business location. When the property is not received by the purchaser at the business location of the seller, the sale is sourced to the location where the purchaser or the purchaser’s representative takes possession (receipt) of the property. For the purposes of SSUTA Section 310 and Section 311, receiving and taking receipt of a product is consistent with receiving or taking possession of tangible personal property.

### **Impact**

Conforming to SSUTA Section 311 would not result in a revenue impact. The definitions provided for the terms “receive” and “receipt” are consistent with how the terms are used in California’s Statutes and Regulations as those terms relate to the sale and transfer of tangible personal property.

**Section 311: GENERAL SOURCING DEFINITIONS**

For the purposes of Section 310, subsection (A), the terms "receive" and "receipt" mean:

- A. Taking possession of tangible personal property,
- B. Making first use of services, or
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

**Section 310: GENERAL SOURCING RULES**

- A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:
1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
  2. 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 purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.
  3. When subsections (A)(1) and (A)(2) 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.
  4. When subsections (A)(1), (A)(2), and (A)(3) 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.
  5. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), or (A)(4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, 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).
- B. The lease or rental of tangible personal property, other than property identified in subsection (C) or subsection (D), shall be sourced as follows:
1. 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 subsection (A). 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 shall 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 shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

2. 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 subsection (A).
  3. This subsection 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.
- C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (D), shall be sourced as follows:
1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall 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 shall not be altered by intermittent use at different locations.
  2. 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 subsection (A).
  3. This subsection 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.
- D. 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 subsection (A), notwithstanding the exclusion of lease or rental in subsection (A). “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, semi-trailers, or passenger buses that are:
    - a. Registered through the International Registration Plan; and
    - b. Operated under authority of a carrier authorized and certificated by the U.S. 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 U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

Containers designed for use on and component parts attached or secured on the items set forth in subsections (D)(1) through (D)(3).