
TITLE 45 DEPARTMENT OF STATE REVENUE

Notice of First Public Comment Period
LSA Document #24-432

ATTRIBUTION OF SALES TO THE STATE

PURPOSE OF NOTICE

The Department of State Revenue (department) is soliciting public comment on adding a rule at [45 IAC 3.1-1-55.5](#), and repealing [45 IAC 3.1-1-55](#), concerning the attribution of sales to the state. The department seeks comment on the affected citations listed and any other provisions of Title 45 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

Regulatory Analysis: [20241113-IR-045240432RAA](#)

Notice of Public Hearing: [20241113-IR-045240432PHA](#)

CITATIONS AFFECTED: [45 IAC 3.1-1-55](#); [45 IAC 3.1-1-55.5](#)

AUTHORITY: [IC 6-8.1-3-3](#)

OVERVIEW

Basic Purpose and Background

[45 IAC 3.1-1-55.5](#) is being added due to legislative changes in 2019 (P.L.158-2019, SEC.7) that changed the attribution of most receipts from services and intangibles from a cost of performance basis. The proposed rule will provide certainty to businesses regarding Indiana's treatment of most services and intangible transactions, and to simplify the determination of whether receipts are sourced to Indiana or elsewhere. The rule provides guidance for how Indiana will treat transactions, as well as when the department has varied from the Multistate Tax Commission regulations. Further, this rule provides benefits to businesses and the department by minimizing the scope of disputes regarding sourcing methodology and the location of receipts.

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Bruce Kolb
Senior Counsel
Department of State Revenue
Indiana Government Center North
100 North Senate Avenue, Room N248
Indianapolis, IN 46204

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

The department is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #24-432 Attribution of Sales to the State
Bruce Kolb
Senior Counsel
Department of State Revenue
Indiana Government Center North

100 North Senate Avenue, Room N248

Indianapolis, IN 46204

(2) By email to bkolb@dor.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than December 13, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Department of State Revenue, Indiana Government Center North, 100 North Senate Avenue, Room N248, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Department of State Revenue office.

If the department does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

PROPOSED RULE

SECTION 1. [45 IAC 3.1-1-55.5](#) IS ADDED TO READ AS FOLLOWS:

[45 IAC 3.1-1-55.5](#) Definitions; attribution of sales to state

Authority: [IC 6-8.1-3-3](#)

Affected: [IC 6-3-2-2](#); [IC 6-3-2-2.2](#); [IC 6-5.5-4](#)

Sec. 55.5. (a) The definitions in this section apply throughout this rule.

(b) "Airline rule" means the Special Rules: Airlines, adopted July 14, 1983, by the Multistate Tax Commission.

(c) "Construction contractor rule" means the Special Regulation: Construction Contractors, adopted July 10, 1980, by the Multistate Tax Commission.

(d) "MGAAR" means the Multistate Tax Commission Multistate General Allocation and Apportionment Regulations, adopted February 21, 1973, and as amended through February 24, 2017, including Section 18(c), adopted July 25, 2018.

(e) "Publishing rule" means the Special Rules: Publishing, adopted July 30, 1993, by the Multistate Tax Commission.

(f) "Railroad rule" means the Special Rules: Railroads, adopted July 16, 1981, by the Multistate Tax Commission.

(g) "Trucking rule" means the Special Rules: Trucking Companies, adopted July 11, 1986, by the Multistate Tax Commission and as amended July 27, 1989.

(h) The terms referenced in this rule have the same meaning as provided in MGAAR Reg. IV.17.(a).(3) unless the context specifically requires otherwise.

(i) If a provision of this rule lists multiple possible tests, the tests shall be applied as a hierarchy unless clearly indicated by the particular provision in this rule. The hierarchy is applied in the order by which the test is listed in the particular provision. For instance, subdivision (1) is the first test, and if subdivision (1) cannot result in a determination of a state, subdivision (2) is applied. However, if subdivision (4) states that subdivision (1) must be applied in a particular situation, the test in subdivision (2) is disregarded for that particular situation.

(j) The provisions of this rule do not apply to the following:

- (1) Receipts from insurance premiums.
- (2) Receipts from motorsports racing, including advertising that would otherwise be sourced under this rule.
- (3) Receipts from repatriated foreign dividends under Section 965 of the Internal Revenue Code or global intangible low-taxed income under Section 951A of the Internal Revenue Code.
- (4) Receipts from broadcast services.
- (5) Receipts from telecommunications services.
- (6) Receipts attributable under [IC 6-3-2-2.2](#).

(k) A provision of MGAAR that requires the exclusion of a receipt from a service because the taxpayer is not taxable in a jurisdiction shall be disregarded. However, the disregard for a MGAAR provision does not prevent the exclusion of receipts if:

- (1) the exclusion is specifically provided in [IC 6-3](#); or
- (2) the receipts cannot be sourced to a jurisdiction under this rule.

For purposes of this rule, if receipts can be attributed to any jurisdiction under this rule, but the taxpayer is not subject to tax in that jurisdiction, those receipts are treated as sourced to that jurisdiction.

(l) A receipt may be excluded from the receipts denominator only if and to the extent:

- (1) exclusion of the receipt is explicitly provided under [IC 6-3-2-2](#) or [IC 6-3-2-2.2](#); or
- (2) the jurisdiction to which the receipt can be attributed cannot be determined after applying the provisions set forth in this rule.

(m) A provision of MGAAR that requires a reasonable approximation in the absence of information, but provides a specific methodology for the reasonable approximation, shall be treated as if the specific methodology reflects the benefit of the intangible. However, if a substantial portion of the sales can be determined and the taxpayer or the department reasonably believes the remaining sales follow the same geographic distribution as the determinable sales, the taxpayer or the department may attribute those remaining receipts in the same proportion as the determinable sales.

(n) For a related party transaction, the information the customer has that is relevant to sourcing the receipts of the taxpayer is imputed to the taxpayer.

(o) For a sale, rental, lease, or license of real property, the receipts from the sale are in this state if and to the extent that the real property is in this state.

(p) For a rental, lease, or license of tangible personal property, the following conditions apply:

- (1) Receipts from the sale are in this state if and to the extent that the property is in this state.
- (2) If property is mobile property located both inside and outside this state during the lease or other contract period, the receipts attributable to this state are the receipts from the contract period multiplied by the ratio of the time the property is used in this state to the time the property is used everywhere.
- (3) For purposes of this rule, property in transit between locations of the customer shall be considered to be at the destination of the property.
- (4) Receipts from the rental, lease, or license of an automobile assigned to a traveling employee shall be included in the numerator of the factor of the state:
 - (A) to the extent to which the employee's compensation would be assigned under [IC 6-3-2-2\(c\)](#); or
 - (B) in the state where the automobile is licensed if clause (A) cannot be determined.

(q) For purposes of this subsection, "in-person services" means the services described in MGAAR Reg. IV.17.(d).(2)(A). However, the term does not include legal, accounting, financial, consulting, architectural, engineering, or similar services described in MGAAR Reg. IV.17.(d).(4). For purposes of determining where in-person services are sourced, the following apply:

- (1) If a service is performed with respect to the body of an individual customer in this state (e.g., hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g., live entertainment or athletic performances), the benefit of the service is received in the state where the

service is performed. However, if the service is provided remotely, the following apply:

(A) If a service would be considered an in-person service, but is offered remotely as opposed to in person, the service is in this state if the person receiving the service is in this state. For purposes of determining whether a person is in this state, the taxpayer shall first make a reasonable effort to determine the state or states where the service is received. If the taxpayer cannot determine that state, the receipts shall be sourced to the state from which the service was provided.

(B) If a live entertainment event or athletic performance occurs in one (1) jurisdiction, but a ticket or other admissions price is paid to simulcast the event or performance at a location in this state, the ticket or admissions price is in this state. This does not apply to charges that would be considered broadcast services, such as pay-per-view charges.

(2) If a service is performed with respect to the customer's real estate or tangible personal property at the customer's residence, or in the customer's possession in this state, the service is received in this state.

(3) If a service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside this state, the service is received in this state if the property is shipped or delivered to the customer in this state.

(r) Services delivered to a customer by physical means shall be attributed to the extent the customer receives the benefit in Indiana, subject to the following conditions:

(1) For mail, parcel, or similar delivery services of an item, the benefit is determined by the state to which the underlying item is delivered.

(2) For services where an underlying product is to be delivered in one (1) or more states, the receipts from the services are attributable to this state in the proportion that the underlying product is apportioned to this state. This includes, but is not limited to, the following:

(A) Products delivered to or on behalf of the customer.

(B) Delivery of brochures, fliers, or other direct mail services.

(3) For advertising delivered by physical means, the benefit of the service is as follows:

(A) For billboard or fixed place advertising, where the billboard or fixed place is located.

(B) For advertising services by television, radio, Internet, or broadcast means, the receipts shall be sourced based on the intended audience. In the absence of actual information, the ratio can be determined based on the targeted population in this state to the targeted population in all states.

(C) For advertising by mail, parcel, or similar delivery means, the advertising shall be sourced based on the delivery address where the advertising is mailed.

(s) Services delivered to an individual customer by electronic transmission are sourced to Indiana if the customer receives the services in this state. In the absence of actual knowledge of the place of receipt, the taxpayer may source the receipts based on the customer's billing address.

(t) Services delivered to a business customer by electronic transmission shall be sourced to Indiana if and to the extent the employees or designees of the customer directly use the service in Indiana. If the taxpayer cannot determine the state or states where the service is used, the taxpayer shall use the following to determine sourcing:

(1) If the taxpayer knows where the contract is principally managed by the customer, the receipts shall be sourced to that state.

(2) If the taxpayer cannot determine the state as forth in subdivision (1), the taxpayer shall source the receipts to the state where the customer's order was placed.

(3) If the taxpayer cannot determine the state set forth in subdivision (1) or (2), the taxpayer shall source the receipts to the state of the customer's billing address.

(4) Notwithstanding subdivisions (2) and (3), if a taxpayer derives more than five percent (5%) of its receipts from the sale of services from any single customer and cannot reasonably determine where the service is used, the taxpayer shall source any receipts in accordance with subdivision (1).

(5) Notwithstanding subdivisions (1) through (3), if a taxpayer engages in substantially similar service transactions with more than two hundred fifty (250) customers and a particular customer does not meet the criteria described in subdivision (4), the taxpayer may source the receipts according to the billing address of the customer. However, the taxpayer may only use this attribution for receipts under this subdivision if:

(A) the taxpayer cannot determine the state where the service is used by the customer; and

(B) the taxpayer sources all receipts under this subdivision, other than those described in subdivision (4), or the taxpayer can determine the state where the service is used by the customer.

(6) If a sale under this subsection is made to a related party, the taxpayer shall source the receipts as provided in this subsection; however, if the taxpayer cannot determine the state or states where the service is used, the taxpayer shall attribute the receipts based on the related party's ratio of sales to Indiana to sales to all jurisdictions.

(u) For purposes of subsections (s) and (t), if the taxpayer cannot determine if a taxpayer is an individual or a business customer, the taxpayer shall treat the receipts as being attributable to a business customer.

(v) For services delivered electronically through or on behalf of an individual or a business customer, receipts are sourced to this state to the extent that the end users or other intended recipients of the services are in this state, subject to the following conditions:

(1) For purposes of this subsection, a service is delivered "on behalf of" a customer if:

(A) a customer contracts for electronic delivery of a service; and

(B) the recipient of the service is a third party.

(2) A service is delivered "through" a customer to third party recipients only if the service is delivered to the customer for purposes of resale in substantially identical form to end users or third party recipients.

(3) If a taxpayer selling advertising lacks specific information regarding the intended recipients in a particular state but has, or can reasonably obtain, a known list of subscribers for the advertising service, the taxpayer may use the total number of subscribers in a specific geographic area where the advertising is to be provided. In the absence of information regarding an intended audience or known subscribers, the ratio of the intended population in Indiana to the total population in the intended geographic area shall be used to determine the portion of receipts attributable to Indiana.

(w) For professional services provided to an individual customer, receipts from those services shall be sourced to the customer's state of primary residence, subject to the following conditions:

(1) If the taxpayer cannot reasonably identify the customer's state of primary residence, the taxpayer shall source the receipts to the customer's billing address.

(2) Notwithstanding subdivision (1), if a taxpayer receives more than five percent (5%) of its service receipts from an individual customer, the taxpayer shall identify the customer's state of primary residence and source the receipts to that location.

(x) For professional services provided to a business customer, receipts from those services are sourced as follows:

(1) For professional services provided with regard to real or tangible personal property, including, but not limited to, architectural and engineering services, the location of the real or tangible personal property.

(2) For other professional services, to the state from which the contract is principally managed.

(3) If the state in subdivision (2) cannot be determined, the state of the customer's place of order.

(4) If the state in subdivision (2) or (3) cannot be determined, the state of the customer's billing address.

(5) Notwithstanding subdivision (3) or (4), if a taxpayer receives at least five percent (5%) of its receipts from a customer, the taxpayer is required to identify the state where the contract of sale is principally managed by the customer.

(6) Notwithstanding any other provision of this subsection, for professional services provided to a related party, the portion of the taxpayer's services in Indiana must be in proportion to the related party's receipts from Indiana to the related party's receipts from all jurisdictions.

(y) For the license or lease of intangible property, receipts are attributable to this state to the extent the intangible is used in this state, subject to the following conditions:

(1) A license of intangible property that conveys all substantial rights in the intangible property shall be treated and sourced as a sale of intangible property as provided in subsection (z).

(2) Intangible property licensed as part of the sale or lease of tangible personal property shall be treated as the sale or lease of tangible personal property, and attributed in the same way as the associated tangible personal property.

(3) For a marketing intangible, the receipts from the marketing intangible are attributed as follows:

(A) If and to the extent that the taxpayer has actual evidence of the portion of the receipts attributable to this state, the receipts shall be attributed in that proportion.

(B) If the taxpayer does not have the information needed to determine the proportion under clause (A), the proportion shall be determined based on the proportion of the population in the geographic area in this state as compared to the population of the entire geographic area of the intended market.

(C) For the use of a marketing intangible regarding wholesale sales or transfers, the portion of the receipts attributable to this state shall be determined based on the geographic area where the product is ultimately marketed. The proportion is the population in the geographic area in this state as compared to the population of the entire geographic area.

(D) For purposes of this subdivision, a marketing intangible includes the license of the following:

(i) A service mark.

(ii) A trademark.

(iii) A trade name.

(iv) A copyright.

(v) A license of a film, television, or multimedia production or event for commercial distribution, if the receipts are not considered to be from telecommunications or broadcast services.

(vi) A franchise agreement.

(4) For receipts from the licensing of rights to use intangible goods other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity, hereinafter referred to as a "production intangible", the licensing fees shall generally be sourced as follows:

(A) If the licensee is not a related party, to the state where the licensee uses the intangible, if this is known or reasonably should be known to the taxpayer. However, if that state is not known or cannot be determined:

(i) to the state of the licensee's commercial domicile, if the licensee is a business; or

(ii) to the state of the licensee's primary residence, if the licensee is an individual.

(B) If the licensee is a related party, to the state where the manufacturing or production process takes place.

(5) If a license of intangible property includes both a marketing intangible and a production intangible, the receipts shall be sourced as follows:

(A) If the amounts are separately and reasonably stated in the licensing contract, those amounts shall be sourced separately.

(B) If the amounts are not separately stated or the separate statement is unreasonable, the receipts shall be treated and sourced as the licensing of a marketing intangible unless, and only to the extent, either the department or the taxpayer can reasonably establish that an amount represents a production intangible.

(6) If the license of intangible property resembles the sale of an electronically delivered good or service, the receipts from the intangible shall be sourced in the same way as the electronically delivered good or service. This includes licenses for which the customer intends to resell the good or service in a substantially identical form to end users or other recipients.

(z) For a sale or an exchange of intangible property, the following conditions apply:

(1) For a sale or an exchange of property where the property is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, receipts are assigned if and to the extent the property is used in this state.

(2) For a sale where the receipts depend on the productivity, use, or disposition of the intangible property, the sale shall be sourced in the manner prescribed in subsection (y).

(3) For receipts from the sale of intangible property that resembles the sale of goods and services, the receipts shall be sourced in the same way as the sale of the underlying goods or services.

(4) Any other receipts from the sale or disposition of intangible property shall be excluded from both the numerator and denominator for apportionment purposes.

(aa) For receipts from providing airline transportation, the receipts shall be attributed to Indiana in the ratio of departures from Indiana, measured by the value and cost of the aircraft, to the departures from all jurisdictions measured by the value and cost of the aircraft. For purposes of this rule, the following conditions apply:

(1) The value and cost of the aircraft will be determined for each departure. Therefore, a plane making six (6) Indiana departures and thirty (30) total departures in which receipts would otherwise be counted will have the value and cost of the plane included in the numerator six (6) times and the denominator thirty (30) times. However, if the plane was operated by a foreign operating company with seven (7) of those flights occurring outside the United States, those seven (7) flights would not be

included in the receipts denominator.

(2) If a taxpayer operates multiple aircraft of a particular type that are ready for flight, the taxpayer may use the average cost or value of that aircraft.

(3) For purposes of this rule, if an aircraft is both owned and operated by a taxpayer, the value and cost of the aircraft must be the original basis of the property for federal income tax purposes at the time of acquisition, adjusted by subsequent capital additions or improvements to the property and any partial disposition of the property. If the property is not acquired by purchase, the property shall be valued otherwise under MGAAR IV.11.(a).

(4) For an aircraft leased or rented by an operator, the value and cost of the aircraft shall be eight (8) times the net annual rental rate, as determined under MGAAR IV.11.(b), including exceptions for subrentals, negative net rental rates, and nominal rental rates.

(5) Any other matters not specifically addressed shall be determined in the manner provided by the airline rule.

(bb) For receipts from providing railroad transportation, the following conditions apply:

(1) The attribution of receipts from the transportation of passengers, and freight and other tangible personal property, shall be determined separately. However, if tangible personal property is handled in passenger service, receipts from the transportation of the tangible personal property shall be considered to be from the transportation of passengers.

(2) Receipts from intrastate transportation, whether in this state or any other state, shall be determined separately from receipts from interstate transportation.

(3) Receipts from the transportation of passengers or property shall be determined as follows:

(A) All receipts from transportation that originates and terminates at a point in Indiana shall be considered as being from this state.

(B) For receipts from interstate transportation of passengers or property, the receipts are in this state determined by the ratio of miles traveled in this state to the total miles traveled everywhere.

(4) Any other matters not specifically addressed shall be determined in the manner provided by the railroad rule.

(cc) For receipts from providing trucking or transportation services of tangible personal property, the following conditions apply:

(1) All receipts from transportation that originates and terminates at a point in Indiana shall be considered as being from this state.

(2) For receipts from interstate transportation, the receipts are in this state determined by the ratio of miles traveled in this state to the total miles traveled everywhere.

(3) Any other matters not specifically addressed shall be determined in the manner provided by the trucking rule.

(dd) For receipts from construction contracts, the receipts from those contracts are in this state if the construction project is in this state, subject to the following conditions:

(1) If the project is located partly within this state and partly outside this state, the portion in this state must be equal to the proportion of construction costs incurred in this state during the period that the receipts are to be otherwise included.

(2) In general, receipts shall be considered to be received if, and to the extent, the receipts are included in income for federal income tax purposes.

(3) If a taxpayer uses a completed contract method of accounting and stops doing business in this state before the contract is completed, the receipts and income from the contract up to the date the taxpayer stops doing business must be included in the taxpayer's receipts and income during the last year in which the taxpayer is doing business in Indiana.

(4) Other matters not specifically addressed shall be determined in the manner provided by the construction contractor rule.

(ee) For newspaper and magazine publishers, the following conditions apply:

(1) For receipts from the sales of magazines and newspapers by digital means, the receipts attributable to those sales are in this state if the purchaser is in this state.

(2) Receipts from advertising are in this state based on the ratio of subscribers in this state to subscribers in all states. If advertising is intended to reach only a specified geographic area, the receipts shall be attributed based on the ratio of subscribers in this state in the specified geographic area to all subscribers in that specified geographic area.

(3) Receipts from the sale of customer lists or similar subscriber data are in this state based on the ratio of subscribers in the list or data in Indiana compared to all subscribers in the list or data.

(ff) For receipts from lottery or gambling, the following conditions apply:

(1) For a person receiving gambling winnings, such as a lottery ticket purchaser or player at a casino, the receipts from gambling winnings shall be sourced to this state if the gambling winnings are the result of the following:

(A) A lottery ticket or an equivalent purchased from a location in Indiana, regardless of whether the contest is conducted solely in Indiana or in conjunction with another jurisdiction.

(B) Wagers at a casino, horse track, sports betting facility, or similar operation conducted at a physical location in this state and from which the wager is placed in person at the location of the operator in this state.

(C) Gambling conducted through Internet, telephone, or other remote means, if the person placing the wager is in this state.

(2) For an operator of a casino, horse racing track, sports betting facility, or similar operation, the following applies:

(A) Gambling receipts from the conduct of in-person gambling, horse racing, sports betting, or similar operations at a physical location in this state are considered to be receipts attributable to this state.

(B) For gambling conducted through Internet, telephone, or other remote means, receipts are in this state if the person placing the wager is in this state.

(C) For purposes of clauses (A) and (B), receipts from gambling activities must equal the portion of wagers, gross receipts, or adjusted gross receipts that are subject to tax if the activities had been conducted in Indiana.

(gg) Receipts from the sale, exchange, or assignment of tax credits, or from the refundable portion of a tax credit includible as income for federal tax purposes, are in this state if:

(1) the tax credit is for a tax imposed by this state, or by or on behalf of a political subdivision of this state; or

(2) the tax credit is a federal tax credit and is earned by doing business in Indiana.

(hh) Receipts described in [IC 6-5.5-4-3](#) through [IC 6-5.5-4-13](#) are attributable to this state in the same manner as provided in those citations, except as specifically provided in this rule, [IC 6-3-2-2](#), or [IC 6-3-2-2.2](#).

(Department of State Revenue; [45 IAC 3.1-1-55.5](#))

SECTION 2. [45 IAC 3.1-1-55](#) IS REPEALED.

Posted: 11/13/2024 by Legislative Services Agency
An [html](#) version of this document.