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Nebraska: Market-based sourcing begins in 2014

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On April 10, Nebraska Governor Dave Heineman (R) approved L.B. 872, which provides that sales other than sales of tangible personal property will be sourced to Nebraska if the sales are derived from a buyer within the state. This market-based sourcing approach is set to take effect for all taxable years beginning or deemed to begin on or after January 1, 2014. [[L.B. 872](#), enacted 4/10/12]

Market-based sourcing

Under the new approach, receipts from sales other than sales of tangible personal property would generally be sourced as follows:

- Sales of a service are sourced to Nebraska if the sales are derived from a buyer within the state. Sales of services are derived from a buyer within Nebraska if:
 - The service, when rendered, relates to real property located in Nebraska;
 - The service, when rendered, relates to the tangible personal property located in Nebraska at the time when service is received;
 - The service, when rendered, is provided to an individual physically present in Nebraska at the time the service is received; or
 - The service, when rendered, is provided to a buyer engaged in a trade or business in Nebraska and relates to that part of the trade or business then operated in Nebraska. If the buyer uses the service within and without the state, calculated using any reasonable method, the sales are



apportioned between the use in Nebraska in proportion to the use of the service in Nebraska and the other states.

- Sales of an application service are sourced to Nebraska if the buyer uses the application service in the state. The application service is used in Nebraska if, the buyer, from a location in Nebraska:
 - Uses it in the regular course of business in Nebraska; or
 - If the buyer is an individual, his or her billing address is in Nebraska. If the location of a sale cannot be determined, the sale of an application service is in the state from which the order was placed in the regular course of the customer's business. If that office cannot be determined, the sales are considered received at the customer's billing address;
- Sales of intangible property are sourced to Nebraska if the buyer uses the intangible property at a location in the state. If the buyer uses the intangible property within and without Nebraska, the sales are apportioned between Nebraska in proportion to the use of the intangible property in Nebraska and the other states. If the location of the sale cannot be determined, the sale of intangible property is in Nebraska if the buyer's billing address is in Nebraska;
- Interest, dividends, investment income, and other net gains from transactions in intangible assets held in connection with a treasury function, other than net gains from the sale or redemption of marketable securities, are sourced to Nebraska to the extent that they are included in taxable income and to the extent the investment, management, and record-keeping activities associated with corporate investments occur in the state;
- In general, gross interest, fees, points, charges and penalties from loans and credit card receivables, net gains from the sale of loans and credit card receivables, and gross receipts from annual fees and other fees charged to credit card holders are sourced to Nebraska if the loans are secured by real or tangible personal property located in the state, to the borrower's billing address if the loans are not secured by real or tangible personal property, or to Nebraska if the credit card holder's billing address is in the state;
- Gross receipts from the lease, rental, or licensing of tangible personal property are sourced to Nebraska to the extent the property is located in the state;
- Gross receipts from the sale, lease, rental, or licensing of real property are sourced to Nebraska if the real property is located in the state;
- Sales other than sales of tangible personal property not otherwise addressed must be sourced so as to fairly represent the extent of the taxpayer's business activity in the state. If the buyer is an individual, a sale is deemed to have occurred at the buyer's billing address. If the buyer is not an individual, and the sale is from an order placed in the regular course of the customer's business, the sale is deemed to have occurred in the state from which the order was placed, and if that place cannot be readily determined, the sale is deemed to have occurred at the customer's billing address.

Communications companies

The new law also provides for the sourcing of sales other than sales of tangible personal property of a communications company. In general, such sales are in Nebraska if the income-producing activity is performed in Nebraska, or if the income-producing activity is performed both in and outside Nebraska and a greater proportion of the income producing activity is performed in Nebraska than in any other state based on costs of performance. A "communications company" includes a telecommunications company, a company that provides the electronic conveyance, or routing of voice, data, audio, video, and the like, to a point or between points, and a broadcast company that provides broadcast radio or television. Also included under the definition is a company that owns, operates, manages, or controls any plant or equipment used to furnish telecommunication service, communication service, broadcast service, or Internet service directly or indirectly to the general public at large and derives at least 70% of its gross sales for the current taxable year from the provision of these services.

PwC Observes

This legislation obviously represents a big change from the former approach," notes Bill Essay, PwC Partner in Houston, Texas. "For example, note the reliance on billing address as the location of the sale of in certain instances."

"Legislators are hopeful that the market-based sourcing approach for sales other than tangible personal property will encourage service oriented companies to locate or stay in Nebraska as the location of service performance becomes less significant."

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