



2020-08 INTERPRETATION

RENTALS / LEASES OF TANGIBLE OR INTANGIBLE PROPERTY

Issue:

Clarifying physical presence and reporting requirements with regards to rentals and leases of both tangible property and intangible property.

Discussion:

The definition of Physical Presence in the Uniform Code includes the situation where a seller:
"[r]ents or leases property located within the boundaries of the local taxing jurisdiction."

Accordingly, Section 230(A) of the Uniform Code establishes that the lessor/seller should report and remit directly to the taxing jurisdiction where the property is physically located during the rental or lease.

Rented or leased property includes tangible personal property that is eventually returned or purchased after the rental or lease term ends. This includes such property such as video rental kiosks, cell phone towers, construction equipment, copy or postage machines, specialized cell phone equipment, etc.

Rentals or leases of intangible property which, by their nature are not physically located within a local taxing jurisdiction do not create physical presence with the local taxing jurisdiction.

Recommendation:

Rentals or leases of tangible property should be reported directly with the jurisdiction where the property is physically located.

Rental or leases of intangible property are considered remote sales and should be filed through the ARSSTC portal.

A lessor with rentals or leases of both tangible and intangible property into the same taxing jurisdiction should report both types of rentals / leases directly with the jurisdiction in question.

Rationale:

Tangible property is by definition physical, therefore the definition of physical presence in the Uniform Code applies to rentals or leases of tangible property since tangible property can be physically located in a location. Under Section 230(A) of the Uniform Code, the lessor/seller of the tangible property should report and remit directly to the taxing jurisdiction where the property is physically located during the rental or lease term.

Intangible property is by definition not physical; therefore the definition of physical presence in the Uniform Code does not apply to rentals or rentals of intangible property since intangible property

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cannot be physically located in a location. Rentals / leases of intangible property do not create a physical presence and are addressed in Section 230(D) requiring these rentals / leases to be reported directly to the ARSSTC.

There may be situations where a lessor/seller is leasing both tangible property and intangible property into a taxing jurisdiction. In these cases, Section 230(C) would apply, requiring the leases of both the tangible and intangible property to be reported to the taxing jurisdiction. This filing requirement would remain in place for the calendar year following the last presence of leased tangible property in the taxing jurisdiction (*see Section 250 – definition of “physical presence”*).