



Services model:

- Tax service and accommodation separately.
- Source to where customer receives the service.

MTC proposal:

- Tax service as part of the accommodation.
- Source everything to the hotel location.

Travel Agent Services Are Distinct From Hotel Services

While the facts of particular arrangements between travel intermediaries and hotel operators may vary, it is plain as a matter of common understanding that travel intermediaries generally do not provide hotel accommodations. **They neither own nor operate hotels, and their function, to wit, facilitating consumers' booking of hotel accommodations, is distinct from the provision of the hotel lodging itself.**

Because sales taxation should reflect taxpayers' "common understanding" of the transactions in which they engage, sales tax policy supports the view that travel intermediaries' margin should be taxed **as a service discrete from the provision of hotel accommodations.**

Professor Walter Hellerstein

Sourcing of Travel Agent Services

Section 309. APPLICATION OF GENERAL SOURCING RULES

Each member state shall agree to require sellers to source the retail sale of a product in accordance with Section 310. The provisions of Section 310 apply regardless of the characterization of a product as tangible personal property, a digital good, **or a service**.

...

Section 310. GENERAL SOURCING RULES

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 ... occurs ...**

...

Section 311. GENERAL SOURCING DEFINITIONS

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

Taking possession of tangible personal property,

Making first use of services ...

West Virginia Tax Department Publication

2. SERVICE FEES

TAXABILITY OF SERVICE FEES BASED ON CUSTOMER AND CUSTOMER LOCATION

--Service fees for travel agent services directly charged to a West Virginia customer **Taxable**

3. *VENDOR CHARGES FOR NON-TRANSPORTATION SERVICES & AMENITIES*

Out-of-state vendor's services rendered outside of WV

--Charges for services of an out-of-state vendor of lodging, food, rental vehicles or other services or amenities which are rendered wholly outside of West Virginia **Not Taxable**