START\_STATUTE43-1147.  Situs of sales of other than tangible personal property; definitions

A.  Except as provided by subsection B of this section, sales, other than sales of tangible personal property, are in this state if either of the following applies:

1.  The income-producing activity is performed in this state.

2.  The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

B.  For taxable years beginning from and after December 31, 2013, a multistate service provider may elect to treat sales from services as being in this state based on a combination of income‑producing activity sales and market sales. If the election under this subsection is made pursuant to subsection C of this section, the sales of services that are in this state shall be determined for taxable years beginning from and after:

1.  December 31, 2013 through December 31, 2014, by the sum of the following:

(a)  Eighty‑five percent of the market sales.

(b)  Fifteen percent of the income‑producing activity sales.

2.  December 31, 2014 through December 31, 2015, by the sum of the following:

(a)  Ninety percent of the market sales.

(b)  Ten percent of the income-producing activity sales.

3.  December 31, 2015 through December 31, 2016, by the sum of the following:

(a)  Ninety‑five percent of the market sales.

(b)  Five percent of the income-producing activity sales.

4.  December 31, 2016, by one hundred percent of the market sales.

C.  A multistate service provider may elect to treat sales from services as being in this state under subsection B of this section as follows:

1.  The election must be made on the taxpayer's timely filed original income tax return. The election is:

(a)  Effective retroactively for the full taxable year of the income tax return on which the election is made.

(b)  Binding on the taxpayer for at least five consecutive taxable years, regardless of whether the taxpayer no longer meets the percentage threshold of a multistate service provider during that time period, except as provided by paragraph 2 of this subsection. To continue with the election after five consecutive taxable years, the taxpayer must meet the qualifications to be considered a multistate service provider and renew the election for another five consecutive taxable years.

2.  During the election period, the election may be terminated as follows:

(a)  Without the permission of the department on the acquisition or merger of the taxpayer.

(b)  With the permission of the department before the expiration of five consecutive taxable years.

D.  For a multistate service provider under subsection E, paragraph 3, subdivision (b) of this section, an election under subsection B of this section is limited to the treatment of sales for educational services. For a multistate service provider under subsection E, paragraph 3, subdivision (c) of this section, an election under subsection B of this section is limited to the treatment of sales for support services, the payment for which is a percentage of the sales for educational services generated by a regionally accredited institution of higher education.

E.  For the purposes of this section:

1.  "Income-producing activity sales" means the total sales from services that are sales in this state under subsection A of this section.

2.  "Market sales" means the total sales from services and sales of intangibles, as defined in paragraph 3, subdivision (a) of this subsection, for which the purchaser received the benefit of the service or intangibles in this state.

3.  "Multistate service provider" means any of the following:

(a)  A taxpayer that derives more than eighty‑five percent of its sales from services or sales from intangibles provided to purchasers who receive the benefit of the service or intangibles outside this state in the taxable year of election, and includes all taxpayers required to file a combined report pursuant to section 43‑942 and all members of an affiliated group included in a consolidated return pursuant to section 43‑947.  In calculating the eighty‑five percent, sales to students receiving educational services at campuses physically located in this state shall be excluded from the calculation.  For the purposes of this subdivision, "sales from intangibles" means sales derived from credit and charge card receivables, including fees, merchant discounts, interchanges, interest and related revenue.

(b)  A taxpayer that is a regionally accredited institution of higher education with at least one university campus in this state that has more than two thousand students residing on the campus, and includes all taxpayers required to file a combined report pursuant to section 43‑942 and all members of an affiliated group included in a consolidated return pursuant to section 43‑947.

(c)  A taxpayer that has more than two thousand employees in this state and that derives more than eighty-five percent of its sales from support services provided to a regionally accredited institution of higher education, and includes all taxpayers required to file a combined report pursuant to section 43‑942 and all members of an affiliated group included in a consolidated return pursuant to section 43‑947.

4.  "Received the benefit of the service in this state" means the services are received by the purchaser in this state. If the state where the services are received cannot be readily determined, the services are considered to be received at the home of the customer or, in the case of a business, the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering location cannot be determined, the services are considered to be received at the home or office of the customer to which the services were billed. In the case of a multistate service provider under paragraph 3, subdivision (c) of this subsection, the benefit of support services shall be deemed received at the billing address of the student to which the services relate.

5.  "Sales for educational services" means tuition and fees required for enrollment and fees required for courses of instruction, transcripts and graduation. END\_STATUTE