



MULTISTATE TAX COMMISSION

**Notes of Telephonic Meeting of Uniformity Committee's
Section 18 Regulatory Working Group
April 26, 2016**

The meeting was called to order by Chris Coffman, Chair, at 3 pm EST with approximately 17 participants. There were no initial public comments. Mr. Coffman announced that it would be an abbreviated meeting because several key participants were unavailable.

1. The working group agreed that the “trigger” for invoking use of alternative apportionment should be measured by the percentage of the taxpayer’s gross receipts which would not otherwise be subject to market-based apportionment because of the nature of those receipts. The working group cited difficulties in using net income as a determinant. This was an affirmation of a decision reached the week before.
2. Staff recommended that the trigger should use a more flexible verbal standard instead of a fixed mathematical test (e.g., 3.33% of net income) for triggering the use of alternative apportionment. There was no decision on or further discussion of that suggestion.
3. The working group re-affirmed that the trigger should apply to the various categories of “functional test” apportionable income (e.g., interest, capital gains and dividends) as a percentage of the taxpayer’s overall gross receipts on a cumulative basis, and not individually.
4. Holly Coon of the Alabama Department of Revenue suggested that use of a taxpayer’s property and payroll as a means of determining receipts factor apportionment should remain in the proposed regulation, but dropped to a second default category, before the third option of using the taxpayer’s “pro forma” combined apportionment percentages for a separately-filing taxpayer. She noted that the workgroup had previously agreed to this change but it was not reflected on the currently-posted draft.
5. Staff noted that Michael Fatale had asked the group to consider for future meetings whether the proposed capital gains sourcing rules were more complex than necessary and whether those rules might be either arbitrary or unclear in application.
6. Staff pointed out that the Hon. Brian Hamer, the hearing officer appointed to consider proposed changes to the model apportionment regulations (primarily changes to Section 17 and Section 1 regulations), is expected to issue his report shortly. The working group was urged to look for that report on the MTC’s web site in the coming days to see if the report may impact our Section 18 efforts.
7. Staff was reminded to make sure the notes from the April 19, 2016 meeting are posted to the project webpage.

The meeting was adjourned by the Chair at 3:30 EST.

Notes prepared by:

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