MULTISTATE TAX COMMISSION

Summary of the Model General Allocation and Apportionment Regulations (2018)

The Model General Allocation and Apportionment Regulations (the Model) provide the rules for implementing the Uniform Division of Income for Tax Purposes Act (UDITPA), including MTC recommended revisions to that model act. These revisions included changes to Sections 1, 17, and 18, as adopted in 2014 and 2015, that affected:

- the definition of "receipts,"
- the sourcing of receipts from services and intangibles for purposes of the receipts (sales) factor using a market approach, and
- the rules for using equitable apportionment.

The Model contains explanations of the 2018 changes and detailed drafter's notes as guidance for adoption and use of the regulations by states. Also note that the section on market sourcing of receipts from services and intangibles contains numerous specific examples.

Below is a summary of the Model's provisions. Note that the numbering reflects that UDITPA is included in the Multistate Tax Compact as Article IV (which is why the regulation is numbered "Reg. IV.") Also, the Section numbers in the Model's regulations generally track the Section numbers in UDITPA (and Article IV) except that Sections 4-8 of UDITPA containing rules of allocation are not specifically addressed in the regulations except by reference.

Reg. IV.1. [Business/Nonbusiness or Apportionable/Non-Apportionable Income and Unitary Business]

(a). Apportionable and Non-apportionable Income Defined.

(1) Apportionment and Allocation.

(2) Apportionable Income.

(3) "Trade or business," [definition].

(4) Transactional Test.

(5) Functional test.

(6) Relationship of transactional and functional tests to U.S. Constitution.

(7) Non-apportionable income.

(b). Principles for Determining the Existence of a Unitary Business.

(1) Unitary Business Principle.

(2) Determination of a Unitary Business.

(3) Indicators of a Unitary Business.

(4) Commonly Controlled Group of Entities.

(c). Apportionable and Non-apportionable Income: Application of Definitions.

(1) Rents from real and tangible personal property.

(2) Gains or losses from sales of assets.

(3) Interest.

(4) Dividends.

(5) Patent and copyright royalties.

(d). Proration of Deductions.

(1) Year to year consistency.

(2) State to state consistency.

Reg. IV.2. [Definitions and General Provisions]

(a). Definitions.

(1) "Taxpayer"

(2) "Apportionment"

(3) "Allocation"

(4) "Business activity"

(5) “Gross receipts”

(6) “Receipts”

(b)

(1) Application of Article IV: Apportionment.

(2) Application of Article IV: Combined Report.

(3) Application of Article IV: Allocation. [Stating simply that: “Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its non-apportionable income or loss within or without this state in accordance with Article IV.4. to IV.8.”]

(c). Consistency and Uniformity in Reporting.

(1) Year-to-year consistency.

(2) State-to-state consistency.

Reg. IV.3. [“Taxable” in Another State]

(a). Taxable in Another State: In General.

(1) Applicable tests.

(2) Producing non-apportionable income.

(b).Taxable in Another State: When a Corporation Is "Subject to" a Tax under Article IV.3.(1).

(1) A taxpayer is "subject to" one of the taxes specified in Article IV.3.(1) if it carries on business activities in a state and the state imposes such a tax thereon.

(2) The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so.

(c). Taxable in Another State: When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax.

Reg. IV.9. Apportionment Formula.

Reg. IV.10. [Property Factor]

(a). Property Factor: In General.

(b). Property Factor: Property Used for the Production of Apportionable Income.

(c). Property Factor: Consistency in Reporting.

(1) Year to year consistency.

(2) State to state consistency.

(d). Property Factor: Numerator.

Reg. IV.11. [Property Factor]

(a). Property Factor: Valuation of Owned Property.

(1) Property owned by the taxpayer shall be valued at its original cost.

(2) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

(3) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

(b). Property Factor: Valuation of Rented Property.

(1) Multiplier and subrentals.

(2) "Annual rental rate"

(3) "Annual rent"

(4) Exclusions. "Annual rent" does not include:

Reg. IV.12. Property Factor: Averaging Property Values.

Reg. IV.13. [Payroll Factor]

(a). Payroll Factor: In General.

(b). Payroll Factor: Denominator.

(c). Payroll Factor: Numerator.

Reg. IV.14. Payroll Factor: Compensation Paid in This State.

Reg. IV.15. [Receipts or Sales Factor Generally]

(a). Receipts Factor: Additional Principles.

(1) Exceptions.

(2) Year to year consistency.

(3) State to state consistency.

(b). Receipts Factor: Denominator.

(c). Receipts Factor: Numerator.

Reg. IV.16. [Receipts or Sales Factor – Tangible Personal Property]

(a). Receipts Factor: Sales of Tangible Personal Property in This State.

(1) Gross receipts from sales of tangible personal property (except sales to the United States Government; see Regulation IV.16.(b)) are in this state:

(2) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(4) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(6) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(7) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(b). Receipts Factor: Sales of Tangible Personal Property to the United States Government in This State.

Reg. IV.17. [Receipts or Sales Factor – Sales Other Than Tangible Personal Property]

(a). Receipts Factor: Sales Other Than Sales of Tangible Personal Property in This State: General Rules.

(1) Market-Based Sourcing.

(2) Outline of topics.

(3) Definitions.

(4) General Principles of Application; Contemporaneous Records.

(5) Rules of Reasonable Approximation.

(6) Rules with Respect to Exclusion of Receipts from the Receipts Factor

(7) Changes in Methodology; [tax administrator] Review

(8) Further Guidance.

(b). Sale, Rental, Lease or License of Real Property..

(c). Rental, Lease or License of Tangible Personal Property.

(d). Sale of a Service.

(1) General Rule.

(2) In-Person Services.

(3) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.

(4) Professional Services.

(e). License or Lease of Intangible Property.

(1) General Rules.

(2) License of a Marketing Intangible.

(3) License of a Production Intangible.

(4) License of a Mixed Intangible.

(5) License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.

(f). Sale of Intangible Property.

(g). Special Rules.

(1) Software Transactions.

(2) Sales or Licenses of Digital Goods or Services.

(h). Mediation.

Reg. IV.18. [Equitable Apportionment and Special Rules]

(a). Special Rules: In General.

(b). Special Rules: Property Factor.

(c). Receipts Factor. [This Reg. IV.18.(c) applies to the determination of the receipts factor if the taxpayer's receipts are less than 3.33 percent of the taxpayer's gross receipts and provides sourcing rules for difficult to source receipts.]