INTERIM REPORT OF HEARING OFFICER
REGARDING PROPOSED ADOPTION OF
MULTISTATE TAX COMMISSION REGULATION IV.18.(j)
(Publishing)

On November 9, 1990, the Executive Committee of the Multistate Tax Commission adopted a resolution ordering a public hearing to be held pursuant to Article VII(2) of the Multistate Tax Compact regarding a proposed allocation and apportionment regulation pertaining to the attribution of income from the business of print media (the affected industry is hereafter referred to as "publishing" industry). (See Exhibit 1)[1]. The regulation as originally proposed is set forth in Exhibit 2.

Bylaw No. 7 of the Multistate Tax Commission requires the Hearing Officer to submit to the Executive Committee a report which shall contain a synopsis of the hearing proceedings and a detailed recommendation for Commission action. In the case of a hearing, such as the present one, that is held pursuant to Article VII(2) of the Compact, the final recommendation of the Hearing Officer is to include a proposed draft of the regulation which is the subject matter of the hearing.

A Final Report of the Hearing Officer is normally divided into three parts. The first is a synopsis of the public hearing proceedings which were held; the second part is a brief discussion of the major substantive issues to be addressed; and the third part is the Hearing Officer's recommendation for Commission action concerning the adoption of the proposed Regulation IV.18.(j). Because the Hearing Officer has determined to hold one additional public hearing session before issuing his Final Report, only the synopsis of the public hearing proceedings held thus far will be set forth in this Interim Report, along with the reasons for holding the additional public session.

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[1]. Due to the length of some of the Exhibits and the fact that this is an Interim Report and not the Final Report of the Hearing Officer, only two exhibits - Exhibits 2 and 10 - shall be reproduced here. All other exhibits are available in the hearing record and will be incorporated into the Final Report. Those persons desiring a copy of any of the exhibits may obtain them by contacting the Multistate Tax Commission's Director of Policy Research, Michael Mazerov, by writing to him at 444 No. Capitol St., N.W., Suite 409, Washington, D.C. 20001.

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I

SYNOPSIS OF PUBLIC PROCEEDINGS

A. Notice and Public Hearing.

Notices of the two sessions of the public hearing to be held were provided as set forth in Exhibit 3. On March 28, 1991, the initial session of the public hearing was held in Washington, D.C. On May 7, 1991, the second public session was held in Los Angeles, California. Additionally, the public was invited to submit additional written testimony or submissions through and including May 15, 1991. In addition to the two sessions of the public hearing, the Hearing Officer met with several industry representatives at the offices of Gannett Co., Inc. in New York City on April 9, 1991.

B. Material Submitted for the Record.

The public sessions of the hearing, in accordance to the Notices of Public Hearing were called to order at approximately 10:00 A.M. on March 28, 1991 and May 7, 1991, in Washington, D.C. and Los Angeles, California, respectively, by Alan Friedman, General Counsel to the Multistate Tax Commission, who presided as Hearing Officer for the Commission. There were 22 persons in attendance at the Washington, D.C. session; and 11 persons in attendance at the Los Angeles, California session. Those in attendance at the two public hearing sessions, as well as those at the April 9, 1991 meeting are listed in Exhibit 4.

The oral statements of the witnesses and those present at the public sessions were tape recorded; and the recordings, which are made a part of the record, are available for review upon request to the Multistate Tax Commission. The following additional written materials have been submitted to the Hearing Officer and will be made a part of the hearing record:

Exhibit 5.	Supplemental Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting) (without Exhibits).
Exhibit 6.	Second Supplemental Report of Hearing Officer Regarding Proposed Adoption of Multistate Tax Commission Regulation IV.18.(h) (Television and Radio Broadcasting) (without Exhibits).

Exhibit 7.	Resolution Regarding Adoption of Proposed Allocation and Apportionment Regulation IV.18.(h) dated August 31, 1990.
Exhibit 8.	Letter dated February 20, 1991 from Lorna Turner of the Tribune Company.
Exhibit 9.	Letter dated April 17, 1991 from Benjamin F. Miller, Director, Multistate Tax Affairs Bureau, California Franchise Tax Board.
Exhibit 10.	Letter dated April 25, 1991 from the Hearing Officer to Christopher Baldwin of Gannet Co., including a 4/25/91 draft of "Multistate Tax Commission Proposed Regulation Art.IV.18.(j)(Publishing).
Exhibit 11.	Letter dated April 30, 1991 from Roger Stone, Revenue Audit Supervisor, State of Alaska Department of Revenue.
Exhibit 12.	Letter dated May 1, 1991 from Thomas H. Nied and Robert S. Tobin of The New York Times Company.
Exhibit 13.	Letter dated May 2, 1991, from Richard Chiogioji, Tax Audit Supervisor, Department of Taxation, State of Hawaii.
Exhibit 14.	Letter dated May 3, 1991 from Stanley A. Gottlieb of The Hearst Corporation.
Exhibit 15.	Letter dated May 6, 1991 from Benjamin F. Miller, Director, Multistate Tax Affairs Bureau, California Franchise Tax Board.
Exhibit 16.	Written Summary of Comments dated May 7, 1991, presented by Karl H. Loring and Victor S. Rappa of Knapp Communications Corporation.
Exhibit 17.	Written Points for Discussion at MTC Hearing dated May 7, 1991 by Jack Plank/Don Mosca of The Times Mirror Company.
Exhibit 18.	Letter dated May 14, 1991 from Christopher W. Baldwin of Gannett Co. Inc. and Written Comments.

Exhibit 19.	Letter dated May 24, 1991 from Don McNeal, Acting Manager, Corporation Tax Section -Audit Division, Oregon Departmnet of Revenue.
Exhibits 20a.-20e.	Audit Bureau of Circulations statements for Architectural Digest, Democrat & Chronicle, USA Today and Detroit Free Press.

II

CHANGE OF CIRCUMSTANCE OCCURRING DURING THE PUBLIC PROCEEDINGS

The initial proposal that is the subject of this public hearing was modelled after MTC Reg. IV.18.(h)(Television and Radio Broadcasting). See Exhibit 2 attached hereto. This was because at the time that the initial proposal was drafted, it was thought that the United States Supreme Court may rule in a pending case that the First Amendment required both the electronic media and the printed media to be treated similarly for the purpose of state taxation. On April 16, 1991, the Supreme Court decided the case of Leathers, Commissioner of Revenues of Arkansas v. Medlock, et al., ____ U.S. ____, No. 90-29 (slip op.) that the First Amendment did not prohibit a state from imposing its sales tax on cable television services, while at the same time exempting the print media from such taxes.

A significant issue - the Equal Protection Clause - still remains to be decided as to the validity of discriminatory treatment among different classes of information-providers. However, such treatment based upon the First Amendment no longer is of significant legal concern. Therefore, shortly after the Leathers v. Medlock case was decided, the Hearing Officer, drafted another version of a print or publication apportionment regulation that did not tie itself directly to the treatment required of television and radio broadcasting. See Exhibit 10 attached hereto.

III

AN ADDITIONAL PUBLIC SESSION OF THIS HEARING IS APPROPRIATE

Due to the shortness of time existing between the date the Leathers v. Medlock case was decided (April 19, 1991), the drafting of the second version of the regulation (April 25, 1991) and the holding of the second session of the public hearing (May 7, 1991), an insufficient amount of time was permitted for dissemination of the second version for the purpose of receiving public comment. On May 17, 1991, at a meeting of the Committee on State and Local Taxation of the Tax Section of the American Bar Association, Mr.

Sterling Weaver, Esq. of Nixon, Hargrave, Devons & Doyle, noted the limited public distribution of the April 25th draft version and suggested that additional opportunity for public comment and appropriate reflection was advisable.

The Hearing Officer finds that the second version of the proposed regulation is one which has not been afforded sufficient circulation to the public, including representatives of the states. I further find that the changes made in such second version, as well as the notion of disengaging the proposal from the concepts embodied in the Television and Broadcasting Regulation, are substantial changes and require additional opportunity being made available for public comment.

On May 3, 1991, the Executive Committee of the Commission authorized the Hearing Officers for all hearing proceedings to determine the number of public sessions that are required for any proceeding and to hold same without the prior approval of the Executive Committee being required. In light of such authority, of the circumstances under which the second version of the proposal has been drafted and circulated, and public comment being received thus far, the Hearing Officer concludes that the holding of one additional public session of these proceedings would be proper and would serve the public interest of providing a fair opportunity for public input. Accordingly, a third session of the public proceedings will be conducted on public notice to be provided in the near future. At such third public session the Hearing Officer shall consider the initial proposal, the draft second version of April 25, 1991, and such other recommendations, comments, and submissions as may be submitted at that session. In the interim, the public record shall remain open until the holding of such additional public session.

Shortly after the conclusion of the third session, the Hearing Officer will issue his Final Report. Interested persons are hereby put on notice that one alternative available to the Executive Committee, should it be deemed appropriate, is to refer a final proposed regulation that it approves to a special meeting of the full Commission that would be held to coincide with a quarterly meeting of the Executive Committee. This matter, therefore, need not await its final resolution until the 1992 Annual Meeting of the Commission is held should the Executive Committee determine otherwise.

Respectfully submitted on June 11, 1991.

Alan H. Friedman
Hearing Officer