

Draft 7/23/97

Multistate Tax Commission  
Task Force A, Corporate Tax Working Group  
Reporter's Notes on Teleconference Meeting  
July 22, 1997 (10:00 a.m. EST)

The following individuals participated in the teleconference: \*Scott Heyman (Sidley & Austin), \*Marshall Stranburg (FL), Merle Buff (Am. Ex.), Jeffrey Friedman (COST), Karen Boucher (A. Anderson), Barry Weissman (ARCO), Jennifer Hays (KY), Gerry Andert (MO), Frank Shaffer (NM), Mark Wainright (UT), and \*\*Michael McIntyre (WSU), Stephen Auster (Int'l Paper), Rene Blocker (MTC), H. Beau Baez, III (MTC), Bob Masterson, John Nebele (Ford), John Segaser (ME), Paul Castlelon (IL), \*\*\*Alan Friedman, Wood Miller (MO), Paull Mines (MTC), and Frank Shaffer (NM), David Wulf, Kendall Houghton(COST), Tom DeLong (Price Waterhouse), W. Val Oveson (UT).

\*Co-leaders  
\*\*Reporter  
\*\*\*Facilitator

#### Summary of Consensus Reached

After extended discussion, the group reached consensus on the following points:

##### 1. Transactional Test.

For constitutional purposes, the description of the transactional test in lines 55 to 69 of the proposed "Allocation and apportionment Regulations" is acceptable. Some noted the need to define certain terms in the description. See items 3 and 4 of the subsequent "Summary of Points of Discussion."

The industry side was in consensus that the sentence contained in lines 69-74 should be omitted. There was consensus on the state side that possible omission of the language should be a reserved issue, to be discussed with the full PPWG. The extent to which the state side would agree to omission of the specified language could depend in part on how the functional test is defined in the final regulations.

##### 2. Functional Test.

For constitutional purposes, the following modification of lines 75-79 would capture the general principle embodied in the functional test:

(4) Functional test. Business income also includes income from tangible and intangible property if the property serves an operational function in the taxpayer's regular trade or business.

There was consensus that this general statement would need to be supplemented with more specific language and that the subtexts provided in items A through F (lines 79-136) would need to be modified to serve this function. In particular, those items should be redrafted to focus on what types of activities, etc., brought income within business income and what activities, etc., would result in the income being nonbusiness income. The specific UDITPA language omitted from existing lines 75-79 might be reintroduced, in whole or in part, in the redrafted items A through F. Paull Mines agreed to provide

a working document for the taskforce to take a first cut at implementing the described consensus approach.

#### Issues for Future Discussion

The next step for the group is to address the language changes needed in lines 79-136 of the proposed regulation. Also necessary, is to go beyond the constitutional issues and attempt to reach consensus on how close the constitutional understanding comes to the language of the UDITPA statute.

#### Summary of Points of Discussion

The following is a very brief summary of some issues addressed by the group.

1. From a constitutional perspective, the regulatory language in lines 55-57 should not refer to "taxpayer's trade or business" but to "taxpayer's unitary business." It was noted that there is a benefit in keeping the old "trade or business" language but that the Supreme Court does not use that term in defining the scope of state taxing power.
2. It was suggested that from a practical standpoint, the language in line 60 of the proposed regulation, referring to the taxpayer's trade or business "conducted within [this State]," implicitly incorporates the unitary concept.
3. Some problem remains to be resolved as to what is a taxpayer's "customary" trade or business (line 72).
4. Some problem remains on what "frequently" means (line 68).
5. Someone from the industry side wants it clear that something besides income addressed in Allied Signal remains outside business income concept. The suggestion was that the redrafted items A-F would clarify areas of agreement and disagreement on that issue.

#### Next Meeting

The next meeting is scheduled for Whitefish, Aug. 6, 1997.