



**Resolution Adopting Recommended Amendments to Section 18
of model Multistate Tax Compact Article IV [UDITPA]**

WHEREAS, UDITPA was incorporated into the model Multistate Tax Compact as Article IV;
and

WHEREAS, in July 2009, the Executive Committee instructed the Uniformity Committee to
consider and draft amendments to Article IV of the model Compact; and

WHEREAS, in March 2012, the Uniformity Committee referred draft amendments to the
Executive Committee; and

WHEREAS, in December 2012, the Executive Committee voted to approve the draft
amendments for public hearing; and

WHEREAS, on a public hearing was held on March 28, 2013, and the hearing officer's report
was submitted to the Executive Committee in December 2013; and

WHEREAS, the Executive Committee voted on May 8, 2014 to recommend that the
Commission approve the draft amendments along with two amendments suggested by the
hearing officer's report, substantially as written, and one amendment suggested by the
report conditioned on a specific modification to be made by the Uniformity Committee; and

WHEREAS, the modification was made by the Uniformity Committee, submitted to the
Executive Committee and approved on July 31, 2014; and

WHEREAS, the amendments suggested by the hearing officer (as modified) were submitted
to the Compact states in a bylaw 7 survey on September 5, 2014, as attached; and

WHEREAS, a majority of the members responded that they would consider adopting the
amendments;

Now, therefore, be it:

RESOLVED, that the Commission hereby adopts the recommended amendments to model
Multistate Tax Compact, Article IV, as attached.

ATTACHMENT
**Recommended Amendments to Section 18
of model Multistate Tax Compact Article IV [UDITPA]**

Art. IV.18 [RECOMMENDED AMENDMENTS SHOWN UNDERLINED]

(a) If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) (1) If the allocation and apportionment provisions of this Article do not fairly represent the extent of business activity in this State of taxpayers engaged in a particular industry or in a particular transaction or activity, the tax administrator may, in addition to the authority provided in section (a), establish appropriate rules or regulations for determining alternative allocation and apportionment methods for such taxpayers.

(2) A regulation adopted pursuant to this section shall be applied uniformly, except that with respect to any taxpayer to whom such regulation applies, the taxpayer may petition for, or the tax administrator may require, adjustment pursuant to Section 18(a).

(c) The party petitioning for, or the [tax administrator] requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (a) must prove by [Drafter's note: insert standard of proof here]:

(1) that the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's activity in this State; and

(2) that the alternative to such provisions is reasonable.

The same burden of proof shall apply whether the taxpayer is petitioning for, or the [tax administrator] is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. Notwithstanding the previous sentence, if the tax administrator can show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the tax administrator shall not bear the burden of proof in imposing a different method pursuant to (a).

(d) If the [tax administrator] requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the [tax administrator] cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this Article.

(e) A taxpayer that has received written permission from the [tax administrator] to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the [tax administrator] reasonably relied.