Benjamin F. Miller

450 Wilhaggin Drive

Sacramento, CA 95864

(9160 488-0381

March 14, 2016

Brian Hamer, Hearing Officer

Multistate Tax Commission

Dear Mr. Hamer

Pursuant to the extension of time to March 16, 2016, I am submitting these comments as an individual who has worked in the area of state income taxation for over 45 years. Page references are to the Redline version of the proposed regulations dated January 6, 2016.

Pg 40 (a)(3)(G)

Population is defined solely be reference to data maintained by the United States Census Bureau. Multijurisidictional taxpayers do not necessarily confine their activities to areas which the United States Census Bureau maintains statistics. It may be necessary to provide a resource for population statistics for other areas. If the data is expanded to include country data there may also, be a need for limiting the geographic areas to subsets. For example, several of the Asian countries have populations in the billions but only a portion of their populations might represent a market for taxpayers. If the total population of these countries were included in any assignment rules based upon population data they would likely result in an over-weighting of their contribution to the market for the taxpayers goods or services.

Pg 43 (a)(7)(C)(6)

Adjustments are allowed when a tax administrator concludes that the billing address was selected by the taxpayer for "tax avoidance purposes." This subsection should be struck.

It is unnecessary.

No standard is provided for making this determination. It is not clear whether it must be the exclusive purpose, the primary purpose, or a minor purpose. Without a standard it will be difficult to enforce. Depending on the standard, which almost certainly will be subjective, it may be extremely difficult for the tax administrator to meet it.

Finally, it is inappropriate to include the language "tax avoidance" in a general rule not designed to address improper conduct by a taxpayer.

Pg. 49 (d)(3)(B)(1)(c) Example(i) end of second line

Replace “transacts” with “contracts”

Pg 50 (d)(3)(B)(2)(a)((ii)

Suggest breaking this up into two parts a (ii) and a (iii). With (iii) being the last sentence of the current (ii)

Pg 53 (d)(3)(B)(2)(c) Examples

Suggest making Example (iii) and (iv) subsets of (ii)

Pg 55 (d)(3)(B)(3)(c)(i) and (ii)

The term “area” is used here and in several other places without a definition of area. It appears the intent is that “area” is meant to mean the content is defined in the agreement as being deliverable just to a defined geographic area. Perhaps it is the area serviced by the service that is delivering the content.

Pg 56 (d)(3)(B)(3)(d)Example (i)

The example starts with a “first” and a “second.” Clarity should be provided as to whether the assignment rule applies to both the first and second or perhaps the words “first” and “second” should be stricken with an “and” inserted between the two sentences.

Pg 58 (d)(3)(B)(3)(d)Example (vi)

Seems to be confused. The second sentence says it could one of two things. The next sentence says assume it is one of those. Then further down in a sentence starting with “Note” it says it does not matter

Pg 59 (d)(4)(B)1 and (C)

I suggest there should be another category of professional services which need their own assignment rule. Services which are involved in some type of hearing that is specific to a location. An example would be contesting a state tax assessment in either an administrative or judicial proceeding which is held a specific state. The service should be assigned to that specific state.

This is something that is frequently encountered in state taxation of multijurisdictional taxpayers. State A makes a tax assessment against a taxpayer located in State B who is represented by a legal firm or accounting firm with an office in state C. The adjudication of the matter will occur in State A.

This rule should apply in the context of any administrative or judicial proceeding. Arguably it might be classified is an "in-person" proceeding but this should be made clear. The last sentence of this provision takes various professional services, including legal and accounting, out of the in-person service

Pg. 62 (d)(4)(B)5.Examples

Should this be (d)(4)(C)? The examples involve appear to involve all of (d)(4). They are not limited to only the things described in (d)(4)(B)

Pg 78 IV.18(c)

Is there anything left. All that is shown is strike-out of the substantive rules.

Respectfully yours

Benjamin F. Miller