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**Sent:** Monday, November 2, 2015 11:34 AM  
**To:** UDIPTA Sec. 1 Workgroup  
**Subject:** Material for Thursday

Please see definitions and synonyms for some of the words we are considering:

**Type:** 1. a category of people or things having common characteristics.  
"this type of heather grows better in a drier habitat"

*synonyms:* [kind](#), [sort](#), [variety](#), [class](#), [category](#), [set](#), [genre](#), [species](#), [order](#), [breed](#), [race](#);

[style](#), [nature](#), [manner](#), [rank](#);

[generation](#), [vintage](#);

[stamp](#), [ilk](#), [cast](#), [grain](#), [mold](#), [stripe](#), [brand](#), [flavor](#)

"a pastor of the old-fashioned type"

1. **Kind:** a group of people or things having similar characteristics.  
"all kinds of music"

*synonyms:* [sort](#), [type](#), [variety](#), [style](#), [form](#), [class](#), [category](#), [genre](#);

[genus](#), [species](#), [race](#), [breed](#);

[flavor](#)

"all kinds of gifts"

1. **Particular:** 1. used to single out an individual member of a specified group or class.  
"the action seems to discriminate against a particular group of companies"

*synonyms:* [specific](#), [certain](#), [distinct](#), [separate](#), [discrete](#), [definite](#), [precise](#);

[single](#), [individual](#)

"a particular group of companies"

"Type" and "Kind" have an almost identical definition and similar synonyms. While one may sound better than another, I am suggesting that no change be made between "type" or "kind" since these words mean the same thing and have synonyms so closely related. "Particular" singles out an item within a group.

Please see the current language below with **KIND, TYPE, PARTICULAR, or LINE OF** typed in **RED** and any suggested changes highlighted in **turquoise**. I am suggesting two changes. Please review for our Thursday discussion and please remember that this e-mail is a suggestion.

Thank you. Jennifer Hays

**Page 3. Suggested change.**

(B) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of **that type** are customary in the **kind of** trade or business being conducted or are within the scope of what that **particular kind-of** trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities do not satisfy the transactional test. The transactional test includes, but is not limited to, income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business. The transactional test also includes, but is not limited to, income from the sale of property used in the production of apportionable income **of a kind** that is sold and replaced with some regularity, even if replaced less frequently than once a year.

**Page 7. No change suggested.**

(A) A unitary business is characterized by significant flows of value evidenced by factors such as those described in *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A **particular** business operation may be suggestive of one or more of the factors mentioned above.

**Page 8. Suggested change.**

1. *Functional integration*: Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no **particular** ~~specific type of~~ functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance.

**Page 9. No change suggested.**

- e. *Common Purchasing*. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the entities, **particularly** where the purchasing results in significant cost savings or where the products, services or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration.

Page 10. No change suggested.

### (3) Indicators of a Unitary Business.

- (A) *Same Type of Business*. Business activities that are in the same general **line of** business generally constitute a single unitary business, as, for example, a multistate grocery chain.

Pages 10 and 11. No change suggested.

- (C) *Strong Centralized Management*. Business activities which might otherwise be considered as part of more than one unitary business may constitute one unitary business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse **lines of** business may properly be considered as engaged in only one unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices which perform for the business activities the normal matters which a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing.

Page 12. No change suggested.

- (D) A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of paragraph 4 of subsection (B) by showing that those members of the group are not controlled directly or indirectly by the same interests, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subsection, the term "controlled" includes any **kind of** control, direct or indirect, whether legally enforceable, and however exercisable or exercised.

Page 14. No change suggested.

6. Prescribe rules relating to the treatment of partnership agreements which authorize a **particular** partner or partners to exercise voting power of stock held by the partnership.

Page 15. No change suggested.

••• **Reg. IV.1.(c). Apportionable and Non-apportionable Income: Application of Definitions.** The following applies the foregoing principles for purposes of determining whether **particular** income is apportionable or non-apportionable income. The examples used throughout these regulations are illustrative only and are limited to the facts they contain.

Page 15. No change suggested.

*Example (ii):* The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when **particular** pieces of equipment are not needed on any **particular** project. The rental income is apportionable income.

Page 18. No change suggested.

••• **Reg. IV.1.(d). Proration of Deductions.** In most cases, an allowable deduction of a taxpayer will be applicable to only the apportionable income arising from a **particular** trade or business or to a **particular** item of non-apportionable income. In some cases, an allowable deduction may be applicable to the apportionable incomes of more than one trade or business and to items of non-apportionable income. In such cases, the deduction shall be prorated among those trades or businesses and those items of non-apportionable income in a manner which fairly distributes the deduction among the classes of income to which it is applicable.

Page 19. No change suggested.

(3) "Allocation" refers to the assignment of non-apportionable income to a **particular** state.

(4) "Business activity" refers to the transactions and activities occurring in the regular course of a **particular** trade or business of a taxpayer and includes the acquisition, employment, development, management, or disposition of property that is or was related to the operation of the taxpayer's trade or business.

Page 20. No change suggested.

(A) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "receipts" includes all gross receipts from the sales of such goods or products (or other property **of a kind** which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

Page 21. No change suggested.

••• **Reg. IV.2.(b)(2). Application of Article IV: Combined Report.** If a **particular** trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing in Article IV or in these regulations shall preclude the use of a "combined report" whereby the entire apportionable income of such trade or business is apportioned in accordance with Article IV.9. to IV.17.

Page 22. No change suggested.

••• **Reg. IV.3.(a). Taxable in Another State: In General.** Under Article IV.2. the taxpayer is subject to the allocation and apportionment provisions of Article IV if it has income from business activity that is taxable

both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of such business activity (i.e., the transactions and activity occurring in the regular course of a **particular** trade or business), is taxable in another state within the meaning of Article IV.3.

Page 22. No change suggested.

**(1) Applicable tests.** A taxpayer is taxable within another state if it meets either one of two tests: (1) By reason of business activity in another state, the taxpayer is subject to **one of the types** of taxes specified in Article IV.3.(1), namely: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (2) By reason of such business activity, another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.

Page 22. No change suggested.

**(2) Producing non-apportionable income.** A taxpayer is not taxable in another state with respect to a **particular** trade or business merely because the taxpayer conducts activities in that other state pertaining to the production of non-apportionable income or business activities relating to a separate trade or business.

Page 23. No change suggested.

(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. In states which do not, other **types of** taxes may be imposed as a substitute for an income tax.

Page 34. No change suggested.

In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various **types of** professional athletics, and so forth, the foregoing regulations in respect to the apportionment formula may not set forth appropriate procedures for determining the apportionment factors.