

I. Relevant MTC Regulations

1. Definition of Gross Receipts

Reg. IV.2.(a)(5). “Gross receipts” are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction which produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Gross receipts, even if business income, do not include such items as, for example:

- 1) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;
- 2) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;
- 3) proceeds from issuance of the taxpayer’s own stock or from sale of treasury stock;
- 4) damages and other amounts received as the result of litigation;
- 5) property acquired by an agent on behalf of another;
- 6) tax refunds and other tax benefit recoveries;
- 7) pension reversions;
- 8) contributions to capital (except for sales of securities by securities dealers);
- 9) income from forgiveness of indebtedness; or
- 10) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.¹

2. Definition of sales from the provision of services and intangible property

Reg. IV.15.(a)(1)(C). In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency or the performance of equipment service contracts or research and development contracts, “sales” includes the gross receipts from the performance of such services, including fees, commissions, and similar items.

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Reg. IV.15.(a)(1)(E). In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, “sales” includes the gross receipts therefrom. [*Staff query: does the exclusion of “all other receipts from the sale of an intangible property” from the receipts factor numerator in model Section 17(a)(4)(iii)(C) require any revision to Reg. IV.15.(a)(1)(E)?*]

¹ The definition of “gross receipts” in Cal. Rev. & T. Code §25120 is very similar to the definition in MTC Reg. IV.2.(a)(5). However, there are two additional exclusions from the definition. The first is amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer’s unitary business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets. The second exclusion is amounts received from hedging transactions. Proposed UDITPA Article IV.1(g) incorporates those additional exclusions from the definition of “gross receipts.” The model regulation should be similarly amended. The work group should consider whether to recommend the language used by California as the basis for the amendment.

II. Proposed Amendments to California Definition of "Marketable Securities"²

CCR Section 25136-2(b)(5). "Marketable securities" means any security that is actively traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. "Marketable securities" do not include those types of securities that are traded in transactions specifically excluded as gross receipts under Revenue and Taxation Code Section 25120. An "established stock or securities market" is defined as (1) a national securities exchange that is registered under Section 78f of the Securities Exchange Act of 1934 (15 U.S.C. Section 78a to 78pp); or (2) a foreign securities exchange or board of trade that satisfies analogous regulatory requirements under the law of the jurisdiction in which it is organized (such as the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited; the Marche a Terme International de France; the Frankfurt Stock Exchange; and the Tokyo Stock Exchange.)

CCR Section 25136-2(b)(6). For a taxpayer that is defined as a securities dealer under Internal Revenue Code Section 475 (c)(1) ~~that purchases and sells intangible assets of the type defined in Internal Revenue Code Sections 475(c) or (e), such as a registered broker dealer, or a commodities dealer that has made an election under Internal Revenue Code Section 475(e),~~ "marketable securities" means any security that is defined in Internal Revenue Code Sections 475(c)(2) or 475(e)(2)(B), (C), or (D), ~~and any contract to which Internal Revenue Code Section 1256(a) applies,~~ which has not been excepted under Internal Revenue Code Section 475(b). Receipts from marketable securities under this subsection include any interest and dividends associated with such marketable securities. "Marketable securities" do not include those types of securities that are traded in transactions specifically excluded from gross receipts under Revenue and Taxation Code Section 25120(f)(2)(L).

² Proposed additions are indicated in red. Proposed deletions are indicated by strike-outs.