

MTC draft of Mass Rules

b. In-Person Services.

i. In General. Except as otherwise provided in this subsection 4.b, in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing and x-rays and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons; and professional services involving a judicial or administrative consideration of issues involving the customer's obligations to or within a state. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider; or (2) a location of the customer, including the location of the customer's real or tangible personal property; or (3) the location of the judicial or administrative consideration of the issues involving the customer's obligations to or within a state. Various professional services, including legal, accounting, financial and consulting services, and other such services as described in 4.d, although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this section, 4.b, except that such professional services relating to the judicial or administrative consideration of the issues involving the customer's obligations to or within a state are to be treated as in-person services.

ii. Assignment of Sales. Except as otherwise provided in this subsection 4.b, where the service provided by the taxpayer is an in-person service, the delivery of the service is at the location where the service is received. Therefore, the sale is in this state if and to the extent the customer receives the in-person service in this state. In assigning its sales of in-person services, a taxpayer shall first attempt to determine the location where a service is received, as follows:

. . .

(B) Where the service is performed with respect to the customer's real estate in this state, or where the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in this state, or where service relates to a judicial or administrative consideration of issues involving the customer's obligations to or within a state, the service is received in this state.

d. Professional Services.

i. In General. Professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending and credit card services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services. Whether the sale of a professional service is in this state is determined pursuant to this section, 4.d, provided, however, that professional services, such as carpentry, medical and dental services, or child care services that significantly involve or require in-person contact, or services relating to a judicial or administrative consideration of issues involving the customer's obligations to or within a state are "in-person services" within the meaning of 4.b, and are assigned under the rules of 4.b. Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. However, in such cases,

despite this transmission, the assignment rules that apply are those set forth in this section, 4.d, and not those set forth in 4.c, pertaining to services delivered to a customer or through or on behalf of a customer.

ii. Assignment of Sales. In the case of a professional service, other than those subject to assignment as in-person services pursuant to 4.b., it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, for purposes of consistent application of the market sourcing rule stated in [UDITPA], the Commissioner has concluded that the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be approximated. The assignment of a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the sale of a professional service, a taxpayer's customer is the person who contracts for such service, irrespective of whether another person pays for or also benefits from the taxpayer's services. Except as provided in 4.d.ii(D) (mutual fund sales), in any instance in which the taxpayer is not taxable in the state to which a sale shall be assigned, the sale shall be excluded from the numerator and denominator of the taxpayer's sales factor.

(A) General Rule. Sales of professional services other than those services assigned as in-person services pursuant to 4.d.i, those described in 4.d.ii(B) (architectural and engineering services), 4.d.ii(C) (services provided by a financial institution) and 4.d. ii(D) (certain services provided to RICs)), are assigned in accordance with this section 4.d.ii(A).