
Subject:

Re: 830 CMR 63.38.1, Apportionment of Income

I have no problem with Chris' suggestions for breaking up the draft as he proposes.

Two comments which were reflected in my prior draft.

First the last sentence in (C)(3) is a general rule and does not need to be here when we complete the regulation. I had moved it up to the statement of a general rule on services because it has application to every type of service. (I recognize, and Michael pointed out, that the Mass reg has it up as a general rule under section 17.) I agree with that and I think leaving it in here creates a suggestion it does not apply to other service situations. Moving it up to the start of services does make it clear it applies to all. I don't know that anyone disagrees with that but I just wanted to emphasize that.

Second, I am still troubled by the professional services write out of personal services. I had deleted the last sentence in b.i. to take this out and in the professional services section changed the language so professional services that significantly "involve or require" in person contact would be assigned under in person services. I think this is an appropriate rule in the context of legal or administrative proceedings that are state specific. Could be tax could be something else. Maybe if we just describe them as "required" we can handle this. I don't see how this creates any classification problems, it seems to me that it should be straight forward with one answer. This could be accomplished by leaving the last sentence in b.i. and adding language of exception at the end of the sentence "except those that require a presence within the state."

Extending beyond this in person section I am still not understanding the Mass c. section. It seems to me the only special rules beyond the physical delivery rules in the in person section are those involving electronic delivery. It is only there where you have different rules for individuals and businesses. That is why in my draft I moved part of the Mass c up and made b deal with physical delivery and made c only applicable to electronic delivery.

Sorry for extending somewhat beyond in person rules but I am not sure whether I have provided a sufficient explanation for my suggested redraft

Ben