



MEMORANDUM

To: Multistate Tax Commission Uniformity Committee
From: Helen Hecht, General Counsel
Regarding: Approved Minutes – Meeting of June 16, 2016 (By Phone)
Date: June 16, 2016

A meeting of the Uniformity Committee was held by phone on June 16, 2016 for the purpose of considering comments on draft amendments to the General Allocation and Apportionment Regulations – Sections 1 and 17 which were referred by the Executive Committee.

Attendees (those who identified themselves):

Wood Miller, Missouri DOR (Chair)
Chris Coffman, Washington DOR (Vice Chair)
Alysse McLoughlin, McDermott Will & Emery
Catie Oryl, COST
Karen Boucher, FIST Coalition
Michael Fatale, Massachusetts DOR
Charles Dendy, North Dakota DOR
Dee Wald, North Dakota DOR
Don Jones, Oregon DOR
Jeff Henderson, Oregon DOR
Holly Coon, Alabama DOR
Lennie Collins, North Carolina DOR
Phil Horwitz, Colorado DOR
Gene Walborn, Montana DOR
James Savage, Virginia DOR
Scott Fryer, Arkansas DOR
Frank Crociata, New Mexico DOR
Matt Seltzer, Reed Smith
Helen Hecht, MTC
Bruce Fort, MTC
Sheldon Laskin, MTC
Lila Disque, MTC

Wood Miller welcomed everyone and asked for initial public comments. There were none.



Wood also asked for any changes to draft amendments of June 2, 2016 (as revised and posted on the web page), or for their approval. There were no changes and the minutes were approved without objection.

Wood noted that an email had been sent to the uniformity committee and to the public responding to the request for an issue checklist and the issues to be covered were summarized along with supporting information. (The email was forwarded to those who had not received it.) That checklist will also be posted on the web page.

The committee took up the first issue on the checklist (whether the sourcing method used on an original return can be amended – Reg. IV.17(a)(7)(B) – or changed by the tax administrator upon audit – Reg. IV.17(a)(7)(C)) and discussed the comments made by COST and the hearing officer’s recommendation to add “subject to” language introducing subparagraph (C) making it clear that (B) is the general rule. Wood Miller and Chris Coffman, Washington, commented that the doctrine of election is likely to apply to the method of assignment chosen.

Phil Horwitz, Colorado, commented that there is a difference between “method of assignment” and “method of reasonable approximation.” In particular, he noted that where the regulations generally allows for a reasonable method, a change in that method might be looked at differently than where the regulations set out a particular rule for assignment.

Dee Wald, North Dakota, made a motion to adopt the hearing officer’s recommendation to add at the beginning of subparagraph (C): “The provisions contained in this Reg. IV.17.(a)(7)(C) are subject to Reg. IV. 17.(a)(7)(B).” There was no further discussion. A vote was taken with the following states voting yes: North Carolina, Massachusetts, Alabama, Arkansas, North Dakota, Missouri, Montana, Colorado, Washington, and Oregon. No states voted not or abstained.

The committee then took up the second issue on the checklist (whether a taxpayer may make a prospective change in a sourcing method – Reg. IV.17(a)(7)(D)). COST had asked that conditions on prospective changes be removed. The hearing officer recommended removing all conditions on prospective change in sourcing methods other than the method used should comply with the regulations. There was substantial discussion of this issue. Questions raised for discussion included whether the conditions for changing a sourcing method should apply to both methods of assignment and methods of reasonable approximation; whether all of the conditions should be removed; whether in addition to changes for improving accuracy; changes necessitated by changing information should also be allowed; whether records should be required to be retained or notice given, etc.

Wood suggested that the discussion be continued at the next meeting with the committee members giving thought to the following: 1) whether each of the



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conditions in the current Reg. IV.17(a)(7)(D) ought to be retained in some form, 2) whether any particular changes should be made to those provisions, and 3) whether additional conditions or provisions are necessary. If there are changes (other than removing or retaining language) it would be helpful to have the proposed language to suggest.