Multistate Tax Commission
Uniformity Committee
Sec. 17 Regulation Project

SECTION 17 REGULATION PROJECT ISSUE CHECKLIST –

Prepared by MTC Staff and Updated as of December 16, 2014

NOTE: This is a working document, used for discussion by the MTC Uniformity Committee and the Section 17 work group. This checklist will be updated regularly. The checklist does not necessarily reflect the official position of the MTC or any state member or participant.

At its meeting on December 11, 2014, the Uniformity Committee heard a status report from the work group. The Committee also heard a presentation on existing market sourcing regulations. After discussion, the Committee voted to recommend that the work group take up Massachusetts proposed regulations as a framework for the group's model. Therefore, the issue checklist now reflects this focus by shading the issues where the group may want to defer consideration, and adding a section to capture any issues the group may raise specifically with respect to the Massachusetts proposed regulations.

<u>Issue Checklist</u>

General Policy Principles	Status/Consensus
Should market sourcing rules seek to achieve the following: 1. Consistency -- in the sourcing result 2. Harmonizing existing rules 3. Reliability -- in preventing mis-sourcing or manipulation 4. Simplicity -- so that: a. Terms used mean the same thing in different contexts; b. The sourcing rules achieve the same result, as often as	These ideas have been discussed by both the Uniformity Committee and the work group as possible guides for the work in producing model sourcing rules.

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possible, regardless of how the sale is characterized; c. The records required or relied on are generally available; and d. Sales in similar industries or under similar circumstances are sourced similarly. 5. Adaptability -- to allow a logical progression from general rules to more specific rules. 6. Certainty -- to prevent unexpected issues or questions for tax administrators or traps for taxpayers. 7. Compatibility -- so that the rules used in sourcing sales for other state tax purposes, especially sales and use taxes, are compatible with the rules adopted.	
Industries to be Addressed Through Revision of Industry Rules	**Status/Consensus**
The MTC has existing model regulations addressing the following industries: 1. Airlines (currently uses departures) 2. Construction contractors (currently uses situs) 3. Publishing (currently uses a circulation factor) 4. Railroads (currently uses a mileage ratio) 5. TV Broadcasting (currently uses an audience factor) 6. Trucking (currently uses a mileage ratio) 7. Telecom (currently uses rules for traditional, mobile, prepaid and private) 8. Financial Institutions (recently revised for banks, credit unions, production credit associations and financial leasing organizations)	The work group will not address the sourcing of receipts where the issue is covered by an existing model regulation but may recommend the Uniformity Committee review or make changes to these regulations, if necessary.
General Structural/Organizational Issues	**Status/Consensus**
1. Will it work to divide up work between services and intangibles?	Workgroup to decide whether to defer or address.
2. Would adopting certain "procedural" or other general rules help, including: a. Requirement to use good faith (example – MA) b. Safe harbor/threshold for requiring information on receipt (example – MA) c. Request for ruling on method used d. Authority of revenue agency to change method retroactively e. Authority of revenue agency to require change in	Workgroup to decide whether to defer or address.

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method prospectively f. Provision for resolving conflicts in sourcing rules (example – AL)	
3. What does a review of the sourcing rules in states with market sourcing reveal about similarities and differences?	See materials provided to the group by MTC staff for the Nov. 25, 2014 meeting.
4. Does it make sense to address sales to individuals and sales to businesses separately?	Workgroup to decide whether to defer or address.
5. Should intercompany transactions have specific rules?	Workgroup to decide whether to defer or address.
6. Is there agreement that the rules must operate to source the sale to a particular state so that the throw-out rule can be applied?	Workgroup to decide whether to defer or address.
7. In general – when receipts are for delivery of services to multiple locations, should the rules use apportionment or source receipts based on a predominance rule?	Workgroup to decide whether to defer or address.
8. Should there be general definitions of the terms "services" and "delivery?"	Workgroup to decide whether to defer or address.
9. Do we need the rules to clearly distinguish between the general requirements and the provisions for reasonable approximation?	Workgroup to decide whether to defer or address.
10. How should the rules themselves be structured: • General rules with exceptions • Hierarchy or cascading rules • Use of examples	Workgroup to decide whether to defer or address.
Specific Issues Re: Market Sourcing of Services	**Status**
1. "IN-PERSON SERVICES" - Is there general agreement that "in-person" services that must be or are generally performed with the customer present should be sourced to the physical location of the customer? a. What is the general scope of the category? b. What is the relationship to transportation services (not covered by MTC industry regulation)? c. Are there exceptions to this rule? OR - are in-person services only those that are "physically provided." (Note, the concept does not have to be limited to services that	Workgroup to decide whether to defer or address.

benefit "real property" or even property more generally, nor is the location of the "benefit" even relevant under the MTC statute.) Possible exceptions (or factors to consider): i. Depending on who pays ii. Depending on whether the service is performed entirely where the customer is located (example – blood testing that is sent to another state) iii. Depending on whether the service is performed on the customer's tangible personal property (example – repairs where the customer brings the property to a taxpayer in the state who sends it outside the state for the actual work) d. Do the rules need to distinguish between business and individual customers.	
2. "SERVICES WITH RESPECT TO REAL PROPERTY" - Is there general agreement that services to be performed on or with respect to real property should be sourced to the physical location of the real property?	Workgroup to decide whether to defer or address.
a. What is the general scope of the category?	Workgroup to decide whether to defer or address.
b. Are there exceptions to this rule? i. Depending on whether the service is direct or physically changes the property, or is necessitated by the property or is an indirect service ii. Depending on the nature of the service generally or whether there is another purpose for the service than to benefit the real property iii. Other?	Workgroup to decide whether to defer or address.
3. "BUSINESS" AND/OR "PROFESSIONAL" SERVICES – a. NOTE – This distinction in services, while an element of some states' rules, is not an element of Massachusetts rules and so appears inapplicable.	Workgroup to decide whether to defer or address.
4. "SERVICES PERFORMED ON TANGIBLE PERSONAL PROPERTY" – Should the rules look to the location of where the property is or is delivered after the service – or – to where the service is performed on the property, or some other factor.	Workgroup to decide whether to defer or address.
Issues Related to Evaluation of Massachusetts Proposed Regulations as a Basis for Model Rules	**Status**