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**From:** BMiller450@aol.com  
**Sent:** Tuesday, March 3, 2015 4:36 PM  
**Subject:** Re: Reminder: MTC Section 17 Regulation Drafting Group Today, March 3, 2015 a...  
**Attachments:** approximation and other thoughts.docx

Attached are several suggestions from Cal regs. The first deals with a way to limit the geographic reach of approximations. I still like the idea of using internet usage data rather than population as a basis for approximation for internet transmission and ads.

The second was something we mentioned last week which was language which can be made specific for a state which would allow state statutory or regulatory rules to remain in effect. Each state should examine there own rules to determine what they would or would not want to stay in place.

Also an issue to think about is what is the effect of the current MTC Section 18 regs on the sales factor

Finally a provision of the Cal regs which received favorable support from the taxpayer community which recognizes issues on cost of obtaining date.

Ben

## Use of Population as Approximation

Note California is a “benefit received” assigned state.

### Cal. Regulation 25137-2(b)(5)

. . . Reasonable approximation shall be limited to the jurisdiction or geographic area where the customer or purchaser, at the time of the purchase, will receive delivery of the service or the use of the intangible property, to the extent such information is available to the taxpayer. If population is a reasonable approximation, the population shall be the United States population as determined by the most recent United States census data. If it can be shown by the taxpayer that the delivery of the service is being substantially received or intangible property is being materially used outside of the United States, then the population of those other countries where the service is being substantially delivered or the intangible property is being materially used shall be added to the United States population. Information that is specific in nature is preferred over information that is general in nature.

### Language adjusting for state specific rules

Regulation Section 17 shall not be applicable with respect to

(A) – (??) List state specific statutes or regulations for industries or circumstances to the extent a state does not wish to have market based sourcing rules apply for sales factor purposes

le Financials, transportation companies, television and motion pictures etc.

Is there a need to exclude the special sales factor rules under Section 18(c)?

A Possible Saving Clause from California regulation

### Cal Regulation 25137-2(g)(1)

In assigning the sales factor numerator pursuant to Section 17, the tax department shall consider the effort and expense required to obtain necessary information, as well as the resources of the taxpayer seeking to obtain the information, and may accept a reasonable approximation when appropriate, such as when the necessary data of a smaller business cannot be reasonably developed from the financial records maintained in the regular course of business.