



MULTISTATE TAX COMMISSION

**Multistate Tax Commission
Uniformity Committee
Sec. 17 Regulation Project**

SECTION 17 REGULATION PROJECT ISSUE CHECKLIST -

Prepared by MTC Staff and Updated as of September 22, 2014

NOTE: This is a working document, used for discussion by the MTC Uniformity Committee and any subgroups that may be formed to work on the Section 17 Regulation Project and to foster participation of members and the public. This checklist will be updated regularly. Therefore, it is critical that users refer to the date for the most current version. Also, please note that the checklist does not necessarily reflect the official position of the MTC or any state member or participant.

Issue Checklist

A. General Policy Principles

1. Should market sourcing rules seek to achieve the following (or other) policy goals when possible? (If the committee agrees that certain policy principles or goals should guide its work, those principles will be incorporated in this document going forward.)
 - a. Consistency -- in the sourcing result, even where state statutory language may differ to a degree.
 - So, for example, if rule X can be adopted under both “delivery” and “benefit received” statutory language and will lead to the same sourcing result, it is preferable to a rule that, all things

being equal, does not achieve the same consistency.

- b. Harmonizing existing rules -- so that if states have rules in place, the rules adopted by the committee look to those existing rules first to determine how it will proceed.
 - For example, if two rules are possible, a majority rule and a minority rule, all things being equal, the committee will look to the majority rule, or will attempt to incorporate as much as possible from the existing rules that can be harmonized.
- c. Reliability -- in preventing mis-sourcing or manipulation—that is, a result which may be technically correct under the rule but which was not intended generally.
 - For example, a rule that refers to information in a record that cannot be easily changed would be preferable to a rule that refers to information which is in the sole control of a taxpayer and can be changed at will, since the former would be more reliable.
- d. Simplicity -- so that:
 - i. Terms used mean the same thing in different contexts and therefore general definitions are possible;
 - ii. The sourcing rules achieve the same result, as often as possible, regardless of whether the sale is characterized as sale of a service or sale or lease of intangible property;
 - iii. The records required or relied on are generally available to the taxpayer or can easily be obtained; and/or
 - iv. Sales in similar industries or under similar circumstances are sourced similarly.
- e. Adaptability -- to allow a logical progression from general rules to more specific rules giving tax administrators and taxpayers the means to address emerging issues.
 - For example, rules that incorporate general definitions and terms that can be applied more broadly, as well as specific instructions for particular circumstances, can be adapted to new

circumstances and is preferable to rules that simply address narrow issues.

- f. Certainty -- to prevent unexpected issues or questions for tax administrators or traps for taxpayers.
 - For example, a rule that specifically addresses a particular circumstance that is likely to occur and that will require special treatment is preferable to a rule that appears to cover the issue but ignores the possibility that the circumstance will occur.
- g. 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.
 - For example, mobile telecommunications is currently sourced under the federal Mobile Telecommunications Sourcing Act for transaction tax purposes.

- B. Approach to the Issues (This information is preliminary and when the committee decides on a particular approach to the issues, it will be updated and additional topics/issues will be added.)
- 1. Is the work on rules under Sec. 17 susceptible to division by statutory category? That is, can the work be divided up so that the committee or any working groups can focus on a particular area without any harm to the project as a whole? In considering the feasibility of this approach, a potential division along statutory category lines might include the following:
 - a. Definition of “receipts” generally. (Sec. 1(g).) (But see issue B.2. below.)
 - i. General examples.
 - ii. Over-arching industry specific rules.
 - b. Receipts from sale of a service – sourced to delivery. (Sec. 17(a)(3).)
 - i. Definition of “service” – distinguishing services from other types of sales or from intangible property. (But see issue B.2. below.)
 - ii. Definition of “delivery” generally.
 - iii. Sourcing of receipts from personal services.
 - iv. Sourcing of receipts from professional services.
 - v. Sourcing of receipts from other services.

- vi. Treatment of special sales arrangements including contingent fee, bonus, incidental fees, etc.
- vii. Industry-specific rules or examples.
- c. Receipts from intangible property – (Sec. 17(a)(4).)
 - i. In general.
 - Definition of “intangible property. (But see issue B.2. below.)
 - ii. Rental, lease or license of intangible property (whether or not utilized in marketing a good or service) (Sec. 17(a)(4)(i)) including sales of intangible property where receipts are contingent on the productivity, use, or disposition of the intangible property (Sec. 17(a)(4)(ii)(B).) -
 - Definition of rental, lease or license of intangible property (versus sale, in particular).
 - Definition or explanation or examples of sales of intangible property where receipts are contingent on the productivity, use, or disposition of the intangible property.
 - Determination of receipts under different contract arrangements (e.g. contingent arrangements).
 - iii. Rental, lease or license of intangible property not utilized in marketing a good or service – sourced to use. (Sec. 17(a)(4)(i).)
 - Definition of “used in marketing a good or service” (see also below).
 - Definition of “use.”
 - Industry-specific rules or examples.
 - iv. Rental, lease or license of intangible property utilized in marketing a good or service – sourced to where the good or service is purchased by a consumer. (Sec. 17(a)(4)(i).)
 - Definition of “used in marketing a good or service” (see also above).
 - Industry-specific rules or examples.
 - v. Sale of intangible property (whether or not specifically categorized in the statute). (Sec. 17(a)(4)(ii).)

- Definition of sale of intangible property (versus rental, lease or license in particular).
 - vi. Sale of intangible property that comprises a contract right, governmental license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area – if the geographic area includes all or part of the state. (Sec. 17(a)(4)(ii)(A)).
 - Definition of or explanation of “contract right, governmental license, or similar intangible property”
 - Issues involving multi-state licenses.
 - Industry-specific rules.
 - vii. Sale of intangible property not otherwise included in Sec. 17(a)(4)(ii)(B) – excluded from the receipts factor.
 - Industry specific rules or examples.
 - d. Rules for reasonable approximation. (Sec. 17(b).)
 - i. What is the standard for when the state or states of assignment cannot be determined? (See the following issue as well.)
 - ii. What is the standard for reasonable approximation?
 - iii. Examples.
 - e. Rules for throw-out. (Sec. 17(c).)
 - i. What is the standard for reasonable approximation?
 - ii. Examples.
2. Are there issues that will have to be addressed separately from the issues listed in 1 above, either because they have an overarching relevance to the sourcing question or because they do not fit within any particular category?
- a. Definition of “receipts.”
 - b. Definition of “services.”
 - c. Definition of “intangible property” (versus tangible personal property, in particular).
 - d. The standard for when state or states of assignment cannot be determined.
 - e. Rules for allocation of receipts from a single sale to multiple states.
 - f. The standard for when an approximation is reasonable.

- g. Treatment of mixed sales (e.g. bundled sales of services, tangible property and/or intangible property).
3. Are there specific industries that should be set aside at the outset to address separately? For example:
- a. Cloud computing;
 - b. Computer databases;
 - c. Cell phone apps;
 - d. Call centers;
 - e. Remote computer repairs;
 - f. Web design performed in one (or more) state(s) for a web site stored on a server located in another state, accessed by persons around the world;
 - g. Advertising provided by Google or similar search engines; and/or
 - h. Remote installation of software on computers and other devices?
 - i. Other?