



## **REPORT**

**Meeting of the  
Multistate Tax Commission  
Doubletree by Hilton Hotel  
181 Church Street**

**Charleston, South Carolina 29401**

**Dial-In Number to Participate by Phone: 1 (800) 689-9374 – passcode 371632#**

**December 10, 2015**

**8:30am – 4:30pm Eastern**

This report is also available on the MTC website at [mtc.gov](http://mtc.gov). Follow the links to the meeting event.

To: Wood Miller, Chair, Multistate Tax Commission Uniformity Committee  
From: UDITPA Section 1 Workgroup  
Subject: Report on Workgroup's Response to the Committee's Action Items from its July 2015 Meeting  
Date: December 10, 2015

### Introduction

The purpose of this memo is to update the Uniformity Committee as to the status of the work completed by the UDITPA Section 1 regulation drafting work group. The memo also provides a response to the questions posed to the workgroup by the Committee at its July meeting in Spokane, and addresses additional action items raised during that committee meeting.

The Commission's staff would like to thank Jennifer Hays, KY, for her indefatigable work in chairing the workgroup. The workgroup and staff greatly benefited from her energy and focus in working through the draft document. In addition, MTC staff wishes to thank Scott Fryer, AR, Steve Wynn, ID, Dee Wald, ND, and many others from those states and from other states, for their valuable participation and input.

## Background

At its July meeting, the Committee reviewed the UDITPA Section 1 model regulations draft submitted by the workgroup. The Committee identified a number of action items for the workgroup and also raised a number of questions pertaining to the draft.

## Summary of the Issues for Discussion by the Uniformity Committee

At the July 2015 meeting, the Uniformity Committee was asked by the workgroup to give input and direction on several issues. The following is a summary of the questions, the direction given by the committee and the way in which the workgroup proceeded to address the issue:

1. Should the five-year rule for transitioning property from apportionable to nonapportionable income be maintained considering the statutory change? (page 3)

The committee directed the workgroup to retain the five-year rule. The workgroup has done so.

2. Should certain reserved language within the “Determination of a Unitary Business” portion of the regulations be maintained considering the proposed MTC passive holding company regulation has not been promulgated? (page 7)

The committee instructed the workgroup to eliminate that language. The workgroup has done so.

3. Should the draft regulations include lists of income which are or are not receipts? (page 23)

The committee indicated that a list is acceptable but that the cross-reference to Sec. 17 needs to be clarified so that it supports the reason for the receipts not being in the receipts factor. The committee also discussed and asked the workgroup to consider: (1) whether the language should be worded as a presumption, (2) whether the list of receipts excluded under the definition and under Sec. 17 should be treated separately (including the throw-out rule of Sec. 17), (3) whether regulations specifically reference the statutory language being interpreted, and (4) to consider whether the listed items would be excluded in all or virtually all circumstances.

The workgroup has stated the exclusion as a presumption. In all other respects, the workgroup believes that the current draft language is consistent with the intent of the Committee and therefore has not made any further revisions.

4. Are additional definitions required; i.e., “hedging,” “securities,” “nonapportionable receipts,” etc.?

The committee directed that definitions be included. The workgroup has done so, with the exception of “nonapportionable receipts.” The workgroup is of the view that the intent here was to include a definition of “nonapportionable income” which has been done.

5. Is it appropriate for the Section 18 language to be removed at this time, pending new Section 18 regulations to reflect the changes to market based sourcing in Section 17, as well as the elimination of the functional test for receipts?

The committee concurred. The workgroup has removed the language, pending the drafting of new Section 18 language. The workgroup recommends that rules be created for:

- a. Including functional receipts when not doing so would create distortion;
- b. Churning when it comes to the treatment of broker receipts; and
- c. Factoring receivables for accrual taxpayers

In addition to these issues, the workgroup spent time considering a number of other issues that the Committee identified in July. The following issues, among others, were considered and addressed by the workgroup:

1. The Committee raised concerns about the treatment of insubstantial amounts of gross receipts which is currently on page 22 of the draft. Specifically, the Committee asked whether that rule should be a Sec. 18 rule or a Sec. 17 rule of reasonable approximation.

On page 22, paragraph (E) has been moved from near the end of the regulation and is now included as a description of a specific situation following the definition of “receipts.” The Work Group requests that members review this placement for appropriateness. The workgroup recommends no further changes at this time. However, the work group remains open to consider any suggestions for a *de minimis* rule that any interested party may wish to present.

2. The Committee directed the workgroup to consider the treatment of foreign entities under tax haven rules.

The workgroup has done so in the current draft.

The Work Group requests that a complete review of the revised draft be completed for recommendation of the draft to the Executive Committee.