



MULTISTATE TAX COMMISSION

Maximizing the synergies of multi-state tax cooperation

To: MTC Uniformity Committee

From: Sheldon H. Laskin, Counsel

Date: March 6, 2015

Subject: Status report of MTC workgroup on regulations necessary to implement the changes in the definition of receipts under Article IV, Section 1 (g) of the Multistate Tax Compact [UDITPA] that were adopted by the Commission in July 2014

The workgroup has reached consensus as to the following issues.

1. The sales or other disposition of accounts receivables should be included in the definition of receipts only to the extent that the accounts are sold by someone who is engaged in the business of factoring receivables, such as a commercial finance company.
2. The treatment of securities should be addressed under Section 18, even if the taxpayer is regularly engaged in dealing in securities.
3. As only receipts that satisfy the transactional test for business income are included in the definition of receipts, receipts that are received with varying regularity across lines of business would only be included in the definition if they satisfy that test.

4. The sale or other disposition of assets that are not held in the ordinary course of business would not be included in the definition of receipts either because they are not received in the regular course of business and therefore do not satisfy the transactional test or because they do not constitute business income.
5. The treatment of receipts that only satisfy the transactional test for business income should be addressed under Section 18.
6. The treatment of receipts by securities brokers should be addressed under Section 18.
7. It is not necessary to address nonapportionable receipts in the regulations as they are not addressed under Section 1.¹

The work group would appreciate the Committee's guidance as to the following questions.

1. How should churning of assets be addressed? Should only net gains be included in the definition of receipts? Should the gross receipts of broker/dealers be included?
2. What is the appropriate rule for distortion? Is it appropriate to use a percentage test? Or is some other measure of distortion more appropriate?

¹ My notes of the workgroup's discussion on this issue are not clear on this point and I may very well have it wrong.