

Multistate Tax Commission



Resolution No. 98-19

Resolution Suspending the Further Development of a Regulation on the Definition of Business Income

WHEREAS, the decision of the United States Supreme Court in *Allied Signal Inc. v. Director, Division of Taxation*, prompted the Multistate Tax Commission to reexamine its current regulatory definition of business income; and

WHEREAS, the Multistate Tax Commission referred to a Public Participation Working Group a draft resolution of its Uniformity Committee that attempted to provide a refined definition of business income under UDITPA and the United States Constitution; and

WHEREAS, the inability of state representatives and the business representatives participating in the Public Participation Working Group to agree on whether UDITPA establishes two independent tests for determining the existence of business income has precluded reaching consensus on the draft resolution referred to the Public Participation Working Group; and

WHEREAS, until the point in time there is a prevailing judicial understanding that UDITPA does establish two independent tests for business income the Multistate Tax Commission's adoption of a new regulation defining business income will undoubtedly meet strong opposition in many States that may thereafter attempt to adopt the regulation as a part of their administrative provisions; and

WHEREAS, the existing regulation of the Multistate Tax Commission presently does recognize that UDITPA establishes two independent tests for business income, although not necessarily with the same clarity of the draft regulation referred to the Public Participation Working Group; and

WHEREAS, individual States are free to amend their administrative rules in the area of defining business income without the necessity of a regulation adopted by the Multistate Tax Commission;

NOW, THEREFORE, BE IT RESOLVED that the Multistate Tax Commission suspend further work on the draft regulation defining business income until such time as, by judicial decision or other developments, the promulgation of a new regulation defining business income has a reasonable probability of success; and be it further

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RESOLVED, that the Multistate Tax Commission be recorded as understanding that UDITPA does establish two independent tests for business income, as is stated in the current regulations of the Commission and as supported by the U.S. Supreme Court's decision in *Allied Signal*, which distinguished operational (business) and investment (non-business) income; and be it further

RESOLVED, that the Commission continue to explore other approaches with the business community and state officials that would establish a clear and predictable system for the fair apportionment of income.

Adopted this 7th day of August 1998, by the Multistate Tax Commission

W. Val Oveson
Chair

Dan R. Bucks
Executive Director