MTC

MULTISTATE TAX COMMISSION

Multistate Tax Compact Article IV Recommended Amendments

As approved for Bylaw 7 Survey by MTC Executive Committee – May 8, 2014

A. Definition of Business Income

Art. IV.1 (a) "~~Business~~ Apportionable income" means~~:~~

(i) all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

(A) income arising from transactions and activity in the regular course of the taxpayer's trade or business, and ~~includes~~

(B) income arising from tangible and intangible property if the acquisition, management, employment, development, ~~and~~ or disposition of the property ~~constitute integral parts of~~ is or was related to the operation of the taxpayer's ~~regular~~ trade or business ~~operations~~; and

(ii) any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.

Art. IV.1 (e) "Non-~~business~~ apportionable income" means all income other than ~~business~~ apportionable income.

B. Factor Weighting

Art. IV.9 All business income shall be apportioned to this State by multiplying the income by a fraction, [State should define its factor weighting fraction here. Recommended definition: "the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is ~~three~~ four."]

C. Sales Factor

1. Definition of "Sales"

Art. IV.1 (g) "~~Sales~~Receipts" means ~~all~~ gross receipts of the taxpayer that are not allocated under ~~Sections 4 through 8 of this Act~~ paragraphs of this article, and that are received from transactions and activity in the regular course of the taxpayer's trade or business; excep t that receipts of a taxpayer ~~other than a securities dealer~~ from hedging transactions and from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities, shall be excluded.

2. Sales Factor Sourcing (for other than sales of tangible personal property)

Art.VI 17

(a) Sales, other than sales ~~of tangible personal property~~ described in Section 16, are in this State if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

~~(a) the income-producing activity is performed in this State; or~~

~~(b)the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other State, based on costs of performance.~~

(1) in the case of sale, rental, lease or license of real property, if and to the extent the property is located in this state;

(2) in the case of rental, lease or license of tangible personal property, if and to the extent the property is located in this state;

(3) in the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(4) in the case of intangible property,

(i) that is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(ii) that is sold, if and to the extent the property is used in this state, provided that:

(A) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(B) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease or licensing of such intangible property under subsection (a)(4)(i); and

(C) all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(b) If the state or states of assignment under subsection (a) cannot be determined, the state or states of assignment shall be reasonably approximated.

(c) If the taxpayer is not taxable in a state to which a sale is assigned under subsection (a) or (b), or if the state of assignment cannot be determined under subsection (a) or reasonably approximated under subsection (b), such sale shall be excluded from the denominator of the sales factor.

(d) [The tax administrator may prescribe regulations as necessary or appropriate to carry out the purposes of this section.]

D. Distortion Relief

Art. IV.18

(a) If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b)

(1) If the allocation and apportionment provisions of this Article do not fairly represent the extent of business activity in this State of taxpayers engaged in a particular industry or in a particular transaction or activity, the tax administrator may, in addition to the authority provided in section (a), establish appropriate rules or regulations for determining alternative allocation and apportionment methods for such taxpayers.

(2) A regulation adopted pursuant to this section shall be applied uniformly, except that with respect to any taxpayer to whom such regulation applies, the taxpayer may petition for, or the tax administrator may require, adjustment pursuant to Section 18(a).

Resolution Adopting Multistate Tax Compact Article IV [UDITPA] Proposed Amendments

Whereas, in 1957 the Uniform Law Commission (ULC) (formerly, " the National Conference of Commissioners on Uniform State Laws") promulgated the Uniform Division of Income for Tax Purposes Act (UDITPA), the purpose of which was to supply a uniform method of apportioning and allocating the income of a multistate corporation for state tax purposes; and

Whereas, UDITPA was incorporated into the Multistate Tax Compact as Article IV of the Compact; and

Whereas, neither UDITPA nor Article IV of the Compact have been revised in the fifty-seven years since UDITPA was originally promulgated; and

Whereas, changes in the national economy since 1957 from an economy largely based on manufacturing to an economy largely based on the provision of services have rendered UDITPA increasingly outdated; and

Whereas, in reaction to those changes states have increasingly adopted methods of apportioning and allocating corporate income that substantially vary from the UDITPA standard apportionment formula; and

Whereas, after first determining in August 2007 that it would review and revise UDITPA in its entirety, the ULC in June 2009 suspended its UDITPA revision project; and

Whereas, in July 2009, the Executive Committee referred possible revisions to Article IV of the Compact to the MTC Uniformity Committee; and

Whereas, the Uniformity Committee completed its work on the Article IV proposed amendments in March 2012; and

Whereas, in December 2012 the Executive Committee voted to approve the proposed amendments for public hearing, a public hearing was held on March 28, 2013, and a hearing officer's report was submitted to the Executive Committee in December 2013; and

Whereas, the Executive Committee, after further consideration, voted on May 8, 2014 to recommend the Commission approve those portions of the proposed amendments that are attached hereto as an exhibit[1]; and

Whereas, a bylaw 7 survey was sent to the affected compact members on June 5, 2014, whereupon a

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[1] The Executive Committee referred remaining portions back to the Uniformity Committee for inclusion of the Hearing Officer's recommendations as modified by the Executive Committee.

majority indicated they would consider adoption of the proposed amendment;

Now, therefore, be it:

RESOLVED, that the compact member states adopt the attached proposed amendments to Multistate Tax Compact, Article IV.

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Julie Magee, Chair Joe Huddleston, Executive Director

Dated: July 30, 2014