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Suggested Revisions to the Hearing Officer's Section 18 Proposed Amendments, as approved by ~~the Uniformity~~ the Uniformity Committee (July 28, 2014)

Suggested Additions by the Uniformity Committee are highlighted in yellow.

Suggested Deletions by the Uniformity Committee are indicated by strikethrough.

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)

(c) The party petitioning for, or the [tax administrator] requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (a) must prove by [Drafter's note: insert standard of proof here]: (1) that the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's activity in this State; and (2) that the alternative to such provisions is reasonable. The same burden of proof shall apply whether the taxpayer is petitioning for, or the [tax administrator] is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(i) Notwithstanding the foregoing, if the tax administrator can

Comment [SHL1]: Art. IV.18 (b) was approved by the Executive Committee at its meeting in May 2014. It was part of the approved provisions of Art. IV that were submitted to Bylaw 7 survey in June. A majority of the affected states have indicated they would consider adopting those provisions. NO ACTION IS REQUIRED BY THE EXECUTIVE COMMITTEE AT THIS TIME REGARDING SECTION 18(b). It is included in this document solely so that the Executive Committee can view all of Section 18 in one document as there are references to Section 18(b) in the remaining provisions of Section 18.

Draft

show that in any two of the prior five tax years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the tax administrator shall not bear the burden of proof in imposing a different method pursuant to (a).

(d) If the [tax administrator] requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, ~~he or she~~ the [tax administrator] cannot impose any civil or criminal ~~penalties~~ penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely ~~because the taxpayer reasonably relied~~ on the allocation and apportionment provisions of this Article in filing a return.

(e) A taxpayer that has received written permission from ~~been permitted by the [tax administrator]~~ to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the [tax administrator] reasonably relied.

Comment [SHL2]: The work group is not sure that the Executive Committee in fact returned Section 18.(e) to the Uniformity Committee for further work. If it did so, the Executive Committee did not provide any instructions to the Uniformity Committee regarding Section 18.(e). In any event, the suggested revision in the text is a minor technical change that is consistent with the Hearing Officer's draft of Section 18.(e).

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