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February 4, 2010

Mr. Bruce Fort
Counsel
Multistate Tax Commission

RE: Comment on Model Regulation IV.18.(a)

Dear Mr. Fort:

We wish to comment on Multistate Tax Commission Model Allocation and Apportionment Regulation IV.18.(a) which is currently being considered for amendment. We represent a variety of taxpayers who might be viewed as engaged in business in “certain industries” as that term is used in Regulation IV.18.(a).

We believe that consideration should be given to amending the last paragraph of Regulation IV.18.(a) to provide more clearly that a taxpayer in any industry for which an industry-specific apportionment rule has yet to be adopted may rely on the procedures set forth in Multistate Tax Compact Article IV.10 through IV.17 and Regulation IV.10 through IV.17.

The last paragraph of Regulation IV.18.(a) states:

In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics, and so forth, the foregoing regulations in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors. Nothing in Article IV.18. or in this Regulation IV.18. shall preclude [the tax administrator] from establishing appropriate procedures under Article IV.10. to 17. for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.

The first sentence of the quoted paragraph flatly states that the general apportionment procedures of Article IV “do not set forth appropriate procedures” for determining certain industries’ apportionment factors. Moreover, though several different industry-specific apportionment rules were added to the model regulations in the 1980s and 1990s, the model regulations do not address each industry listed in Regulation IV.18(a) (and because the industry list is non-exhaustive, the

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model regulations cannot address every industry).¹ Thus, Regulation IV.18.(a) provides no guidance regarding the appropriate apportionment procedures for taxpayers in an industry that is (or is like) one of the specifically enumerated industries and for which there is no industry-specific apportionment rule.

We are of the view that for these “certain industries,” the general apportionment procedures of Article IV will in fact set forth appropriate procedures for determining apportionment factors and allocation rules, and that no flat prohibition on their use is appropriate if an alternative, industry-specific apportionment rule has not been adopted.

To reflect this view – which we expect is unobjectionable – we suggest that Regulation IV.18.(a) be modified as follows:

~~In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics, and so forth, the foregoing regulations in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors. Nothing in Article IV.18. or in this Regulation IV.18. shall preclude [the tax administrator] from establishing alternative appropriate procedures under Article IV.10. to 17. for determining the apportionment factors for certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics, and so forth, each such industry, but Any such procedures shall be applied uniformly. For any taxpayer in any such industry for which such an alternative apportionment rule has not been established, the general procedures under Article IV.10. to 17. and Regulation IV.10. to 17. for determining the apportionment factors for that taxpayer shall apply, provided that these provisions fairly represent the extent of the taxpayer’s business activity in the state.~~

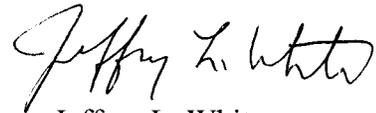
¹ The most recently adopted industry-specific apportionment rule was for financial institutions (1994). Industry-specific apportionment rules were also adopted for construction contractors (1980), railroads (1981), airlines (1983), trucking companies (1986, amended 1989), television and radio broadcasting (1990, amended 1996), and publishing (1993). There are no industry-specific rules for ship transportation, motion pictures, various types of professional athletics, or other industries that might subsequently be added to those enumerated in Regulation IV.18.(a).

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Thank you for your consideration of our comments. We would be glad to discuss them further if that would be helpful to you and your colleagues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey L. White". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jeffrey L. White