

**Draft Issues List**  
**For Potential Revisions to Multistate Tax Commission's Model**  
**Regulation IV.18 on Use of Alternative Apportionment Formulas**

For Discussion Purposes Only

**Introduction:**

Uniform Division of Income for Tax Purposes Act Section 18 provides:

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the [Department] may require, with respect to all or any part of the taxpayer's activity, if reasonable:

- A. Separate accounting;
- B. The exclusion of any one or more of the factors;
- C. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- D. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

**Existing (1973) MTC Regulation IV.18(a) provides:**

Special Rules: In General. Article IV.18 permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases. Article IV.18. may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and non recurring) produce incongruous results under the apportionment and allocation provisions contained in Article IV.

Degree of Current Uniformity Among States for Regulation IV.18.(a):

Many compact states have adopted the MTC's proposed model regulation verbatim or without significant changes. Some non-compact states have adopted similar regulations limiting the use of equitable apportionment provisions. Fifteen states have adopted the regulation verbatim; Nebraska incorporates the regulation in statute.

**Questions:**

1. What is the purpose of Section 18?
  - a. To address new business activity or structures that do not fit well within the general statute and regulations?



- a. less uniformity in treatment of multi-state taxpayers?
  - b. greater levels of litigation?
  - c. less certain tax liability?
- 7. Should any amendment of section 18 regulations await proposed changes to UDITPA?
- 8. Should proposed amendment establish specific criteria rather than broad rules for allowing equitable adjustments?
- 9. Should proposed amendment address distortions of income as well as business activity within a state?
- 10. Should any proposed amendment establish a standard for burden of proof, including who should have the burden of persuasion and level of proof necessary to permit departure from standard formula, e.g., preponderance versus clear and convincing evidence?
- 11. Should any proposed amendment include procedures for invoking relief, e.g., separate petitions, level of decision-making with respect to relief, retroactive versus prospective relief?
- 12. What should be the timelines for project?
- 13. Should the uniformity committee appoint a drafting group?