



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

To: Wood Miller, Chair
Members of the Income & Franchise Tax Uniformity Subcommittee

From: Shirley Sicilian

Date: July 20, 2007

Subject: **Model Telecommunications Apportionment Special Rule –
Outerjurisdictional Property**

The Draft Model Telecommunications Apportionment Special Rule contains a provision specifying that outerjurisdictional property (property not physically located in any state) should be “thrown out” of the property factor denominator. The Committee requested staff further investigate the use of the “throwout” provision and possible alternatives. We’ve identified three possible treatments of outerjurisdictional property relevant to our purposes: throwout, the relative number of satellite uplinks and downlinks in a state, the relative number of earth stations in a state.

1. **Throwout.** The Commission’s Model Special Apportionment Rule for Television and Radio Broadcasting, and a number of states that have adopted this rule, use the throwout approach for outerjurisdictional property. See MTC Reg.IV.18(h) (4)(ii)B.3. at http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Uniformity/Uniformity_Projects/A_-_Z/SpecialRules-TVRadio.pdf

The “throwout” rule is also used for property tax purposes. For property tax, the value of a company as a going concern (a proxy for the value of the company’s total property) is basically apportioned to a state based on a ratio of the original cost of all property in the state to the original cost of all property everywhere. The value of “all property everywhere” generally excludes outerjurisdictional property.

2. **Satellite uplinks and downlinks.** The Commission’s Model Special Apportionment Rule for Publishing, and a number of states that have adopted this rule, use the number of “half-circuits,” i.e. uplinks or downlinks, in the state vs. the number everywhere. See MTC Reg.IV.18.(j)B.2.and 3:

2. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such

property that is attributable to its use in the taxpayer's business activities everywhere.

The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outerjurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outerjurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

3. Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Uniformity/Uniformity_Projects/A_-_Z/SpecialRules-Publishing.pdf

- 3. Location of earth stations.** At least one state, Alaska, sources the value of outerjurisdictional satellites based on the number and location of earth stations.