

Telecommunications Industry Comments on the MTC's Proposed Model Regulation for Apportionment of Income from the Sale of Telecommunications and Ancillary Services

- Instead of moving away from COP altogether, COP can be fixed to address the MTC's concerns by moving away from the "greater proportion" concept and using a "percentage of" methodology.
- The changes proposed are more complicated than the current COP rules, which goes against the MTC's stated objectives.
- Specifically, with respect to the sourcing of wholesale services under Table 15.6, our issues include:
 - Table 15.6 is not based on actual state-by-state data provided by the carriers. Instead, the spread by state is an estimate based on other data gathered.
 - The data is an industry estimate and will not bear any relationship to the operations of a single taxpayer.
 - Table 15.6 only takes domestic revenue into account and does not take foreign revenue into account. Under the current draft, 100% of a company's receipts would be sourced to some combination of the states, without regard to whether the receipts are foreign or domestic. There is no exclusion for foreign source receipts. The regulation would need to be modified to apply Table 15.6 to domestic receipts only or take foreign receipts into account by some other alteration to Table 15.6.
 - The data used to build Table 15.6 is generally at least 2 years old by the time Table 15.6 is published.

Due to differences among the companies, no one alternative was agreed to, however, below are alternatives that the industry has suggested with respect to the rules for sourcing wholesale services:

- At a bare minimum, if Table 15.6 is used, it needs to be modified to reflect foreign activity;
- Abandon any attempt to have a special wholesale rule and apply the telecom apportionment rules on a consistent basis; or
- Apply a bifurcated approach on a consistent basis in which gross receipts from sales of telecommunication services to other telecommunication service providers for resale would be sourced to a state using the apportionment concepts used for non-resale receipts if the information is readily available to make the determination. If the information is not readily available, then the taxpayer can use the method currently contained in the regulation, or some other method agreed to by the taxpayer and the commissioner.