

Additional Comment by Benjamin F. Miller with Respect to Testimony  
Offered at the Hearing of March 28, 2013 in Washington D.C.  
Proposed Amendment to Section 17 of Article IV

At the hearing of March 28, 2013 the hearing officer inquired of me as to how the place of delivery would be determined under proposed Section 17(a)(3) relating to the delivery of a service. In my oral comments I stated that billing address would be used. I would like to amend my oral statement.

The touchstone for determining where delivery is should be information that is available to the taxpayer. It would be my recommendation that a hierarchy needs to be established with respect to where delivery occurs. This hierarchy can be established through regulations. Suggestions for this hierarchy are:

- 1) In the case of a service is being provided for an activity that is primarily or exclusively associated with a state such as the providing of legal services for a suit brought in a particular jurisdiction or with respect to providing services with respect to the construction of something within a particular jurisdiction delivery would be in that state.
- 2) If the recipient of the service is located in a single state, delivery would be in that state. This would normally be particularly appropriate with respect to an individual.
- 3) Delivery would occur at the location of the office which ordered the service.
- 4) Delivery would occur at the address where the bill is sent.

With respect to 3) and 4) it could be appropriate to rely upon approximations in the case of a service provided to a multijurisdictional entity where the service would be utilized throughout the jurisdictions in which the recipient of the service does business.