

Multistate Tax Commission
Proposed Amendments to Multistate Tax Compact Article IV (UDITPA)
Comparison of Uniformity Committee to Hearing Officer Recommendations

Amendments per Uniformity Committee*	Amendments per Hearing Officer
<p>Art. IV. 1</p> <p>(a) “Business Apportionable income” means:</p> <p style="padding-left: 20px;">(i) <u>all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:</u></p> <p style="padding-left: 40px;">(A) <u>income arising from transactions and activity in the regular course of the taxpayer’s trade or business, and includes</u></p> <p style="padding-left: 40px;">(B) <u>income arising from tangible and intangible property if the acquisition, management, <u>employment, development, and</u> or disposition of the property constitute integral parts of is or was related to the operation of the taxpayer’s regular trade or business operations; and</u></p> <p style="padding-left: 20px;">(ii) <u>any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.</u></p> <p>Art. IV.1 (e) “Non-business apportionable income” means all income other than business apportionable income.</p> <p>(Corresponding technical changes to remained of r Article IV are necessary to rename “business income” as “apportionable income.”)</p>	<p>Art. IV. 1</p> <p>(a) “Apportionable Income” means:</p> <p style="padding-left: 20px;">(i) all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including but not limited to:</p> <p style="padding-left: 40px;">(A) income related to the operation of the taxpayer</p> <p style="padding-left: 40px;">(B) income from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is, or was, related to, or part of, the operation of the taxpayer’s trade or business.</p> <p>Art. IV.1(e) “Non-apportionable income” means all income other than apportionable income.</p>

<p>Art. IV. 18.</p> <p>(a) If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:</p> <ol style="list-style-type: none"> (1) Separate accounting; (2) The exclusion of any one or more of the factors; (3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or (4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. <p>(b)</p> <p><u>(1) If the allocation and apportionment provisions of this Article do not fairly represent the extent of business activity in this State of taxpayers engaged in a particular industry or in a particular transaction or activity, the tax administrator may, in addition to the authority provided in section (a), establish appropriate rules or regulations for determining alternative allocation and apportionment methods for such taxpayers.</u></p> <p><u>(2) A regulation adopted pursuant to this section shall be applied uniformly, except that with respect to any taxpayer to whom such regulation applies, the taxpayer may petition for, or the tax administrator may require, adjustment pursuant to Section 18(a).</u></p>	<p>Art. 18.</p> <p>(1) If the allocation or apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the [tax administrator] may require, in respect to all or any part of the taxpayer's business activity, any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.</p> <p>(b)(1) If the allocation or apportionment provisions of this Article do not fairly represent the extent of business activity in this State of taxpayers that are engaged in, or representative of, a particular industry, or that engage in a particular transaction or activity of general applicability, then a [tax administrator] that requires a reasonable method to effectuate an equitable allocation and apportionment of income that it applies uniformly to such industry, or to such transactions or activities, shall publish that method in appropriate rules or regulations.</p> <p>(b)(2) Rules or regulations adopted pursuant to this Section shall be applied uniformly, except that with respect to any taxpayer to whom such regulation applies, the taxpayer may petition for, or the [tax administrator] may require, adjustment pursuant to Section 18(a).</p> <p>(c) The party petitioning for, or the [tax administrator] requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to (a), must prove by [Drafter's note: insert standard of proof here]: (1) that the allocation or apportionment provisions of this Article do not fairly represent the extent of the taxpayer's activity in this State; and (2) that the alternative to such provisions is reasonable. The same burden of proof shall apply whether the taxpayer is petitioning for, or the [tax administrator] is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.</p>
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	<p>(d) If the [tax administrator] requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, he or she cannot impose any civil or criminal penalties solely because the taxpayer reasonably relied on the allocation and apportionment provisions of this Article in filing a return.</p> <p>(e) A taxpayer that has been permitted by the [tax administrator] to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have the permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the [tax administrator] reasonably relied.</p>
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<p>Art. IV. 4 “Sales Receipts” means all gross receipts of the taxpayer that are not allocated under Sections 4 through 8 of this Act paragraphs of this article, and that are received from transactions and activity in the regular course of the taxpayer’s trade or business; except that receipts of a taxpayer other than a securities dealer from hedging transactions and from the maturity, redemption, sale, exchange, load or other disposition of cash or securities, shall be excluded.</p> <p>See also Attachment F for corresponding technical changes necessary to rename “business income as “apportionable income”</p>	<p>Art. IV. 4 Alternative One “Receipts” means gross receipts of the taxpayer that are received from, or associated with , transactions or activities generating apportionable business income defined in AR. IV.1.”</p> <p>Alternative Two “Receipts’ means gross receipts of the taxpayer that are received from, or associated with, transactions or activities generating apportionable business income defined in Ar. IV.1, excluding substantial amounts of such gross receipts from an incidental or occasional sales of fixed asset or other property that was, or is, related to, or part of, the operation of the taxpayer’s trade or business.”</p>
<p>Art. IV. 9 All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus <u>two times</u> the sales factor, and the denominator of which is three <u>four</u>.</p> <p>*As changed by the Executive Committee:</p> <p>Art. IV. 9 All business income shall be apportioned to this State by multiplying the income by a fraction, [State should define its factor weighting fraction here. Recommended definition: “the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.</p>	<p>Art. IV. 9 No recommended changes.</p>

Art. IV. 17

(a) Sales, other than sales of tangible personal property described in Section 16, are in this State if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(a) ~~The income producing activity is performed in this State; or~~
(b) ~~the income producing activity is performed both in and outside this State and a greater proportion of the income producing activity is performed in this State than in any other State, based on costs of performance.~~

(1) in the case of sales, rental, lease or license of real property, of and to the extent the property is located in this state;
(2) in the case of rental, lease or license of tangible personal property, if and to the extent the property is located in this state;
(3) in the case of sales of a service, if and to the extent the service is delivered to a location in this state; and
(4) in the case of intangible property,
(i) that is rented, leased or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and
(ii) that is sold, if and to the extent the property is used in this state, provided that:
(A) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;
(B) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the

No recommended changes.

<p><u>intangible</u> <u>property</u> shall be treated as <u>receipts</u> <u>from the rental, lease or licensing</u> <u>of</u> <u>such</u> <u>intangible</u> <u>property</u> <u>under</u> <u>subsection (a)(4)(i); and</u></p> <p>(C) <u>all</u> <u>other</u> <u>receipts</u> <u>from</u> <u>a</u> <u>sales</u> <u>of</u> <u>intangible</u> <u>property</u> shall be <u>excluded</u> <u>from the numerator and denominator</u> <u>of</u> <u>the sales factor.</u></p> <p><u>(b) If the state or states of assignment under subsection (a) cannot be determined, the state or states of assignment shall be reasonably approximated.</u></p> <p><u>(c) If the taxpayer is not taxable in a state to which a sale is assigned under subsection (a) or (b), or is the state of assignment cannot be determined under subsection (a) or reasonably approximated under subsection (b), such sale shall be excluded from the denominator of the sales factor.</u></p> <p><u>(d) [The tax administrator may prescribe regulations as necessary or appropriate to carry out the purposes of this section.]</u></p>	
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