



**MULTISTATE TAX COMMISSION**

*Maximizing the synergies of multi-state tax cooperation*

**To: MTC Uniformity Committee**

**From: Sheldon H. Laskin**

**Date: April 8, 2014**

**Subject: Conflict Between Proposed UDITPA Art. IV.1 (g) and Art.IV.17 (a) (4) (ii) (C)**

---

The purpose of this memo is to summarize the options available to the Commission to address the conflict between proposed Art. IV.1 (g) and Art.IV.17 (a) (4) (ii) (C).

1. The issue

Proposed Art. IV.1 (g) provides;

**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, loan or other disposition of cash or securities, shall be excluded.**

Proposed Art.IV.17 (a) (4) (ii) (C) provides:

**Sales, other than sales 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 the state...**

**(4) in the case of intangible property,**

...

**(ii) that is sold, if and to the extent the property is used in this state, provided that;**

...

**(C) all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.**

The highlighted language in the two subsections conflict. Under Art.IV.1 (g), gross receipts of a securities dealer are to be included in the receipts factor. But those receipts would be thrown out under proposed Art.IV.17 (a) (4) (ii) (C). If both provisions were to be adopted as written, there could be an interpretative question in some cases as to which provision was intended to apply. This could lead to conflicting decisions regarding the proper treatment of the gross receipts of securities dealer.

## 2. Underlying policy issue

The Committee needs to decide what it wants to recommend to the Executive Committee to resolve this conflict, which resulted from the interaction of two different policies that the Uniformity Committee was trying to address. Overall, the proposal sought to use a transactional approach to sourcing sales, largely to avoid the issues that are implicated by the functional approach. Excluding hedging transactions and the treasury function from the definition of gross receipts under Proposed Art. IV.1 (g) reflects that policy. However, in order to recognize that the receipts of a securities dealer do constitute gross receipts under the transactional approach, Proposed Art. IV.1 (g) specifically includes those receipts within the definition of gross receipts.

Section 17 reflects a different policy entirely. The intent is to avoid attempting to source transactions that cannot be readily sourced. While the goal in both cases is to make the rules simple and administrable, the difference in the policies led to the present conflict.

## 3. Possible Solutions

If the Committee decides the treatment of gross receipts of a securities dealer is not appropriately addressed in Article IV, the solution is simply to strike out the highlighted language in Article IV.1 (g). If the Committee decides that it does wish to address this issue in Article IV, one possible solution is to add a new subsection (d) to Art. IV. 17, to the following effect: "Section 17(a) (4) (ii) (C) shall not apply in the instance of a securities dealer to the extent that such person acts a security dealer with respect to the buying and selling of securities."<sup>1</sup> In that event, the receipts would be included under Article IV. 1 (g) and would not be thrown out under Article IV. 17.

---

<sup>1</sup> If the Committee decides to recommend the second solution to the Executive Committee, current subsection (d) (providing for implementing regulations) would have to be retitled as a new subsection (e).