

**Multistate Tax Compact**  
**Article IV. Division of Income**

**Showing**

- (1) **“Apportion...” and “Business” highlighted in yellow, throughout (“Unitary” is not used in UDITPA.)**
- (2) **“Business Income” changed to “Apportionable Income”**
- (3) **Uniformity Committee proposed version of §§1(g), 9, and 17; and Drafting Group version §1(a) (for an example)**

**SECTION 1.** As used in this Act, unless the context otherwise requires:

DRAFTING GROUP DRAFT:

- (a) **“Business Apportionable income”** means:
  - (i) all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:
    - (A) income arising from transactions and activity in the regular course of the taxpayer’s trade or business, and includes
    - (B) income arising from tangible and intangible property if the acquisition, management, employment, development, 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
  - (ii) 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.
- (b) "Commercial domicile" means the principal place from which the trade or **business** of the taxpayer is directed or managed.
- (c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.
- (d) "Financial organization" means any bank, trust company, savings bank, [industrial bank, land bank, safe deposit company], private banker, savings and loan association, credit union, [cooperative bank], investment company, or any type of insurance company.
- (e) "Non-**business apportionable** income" means all income other than **business apportionable** income.
- (f) "Public utility" means [any **business** entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas].

(g) ~~"Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.~~

UNIFORMITY COMMITTEE DRAFT:

"Sales" means gross receipts of the taxpayer that are not allocated under 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.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

**SECTION 2.** Any Taxpayer having income from **business** activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and **apportion** his net income as provided in this Act.

**SECTION 3.** For purposes of allocation and **apportionment** of income under this Act, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing **business**, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

**SECTION 4.** Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute non-**business** apportionable income, shall be allocated as provided in sections 5 through 8 of this Act.

**SECTION 5.**

(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(1) if and to the extent that the property is utilized in this state, or

(2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

## **SECTION 6.**

- (a) Capital gains and losses from sales of real property located in this state are allocable to this state.
- (b) Capital gains and losses from sales of tangible personal property are allocable to this state if
  - (1) the property had a situs in this state at the time of the sale, or
  - (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.
- (c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

**SECTION 7.** Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

## **SECTION 8.**

- (a) Patent and copyright royalties are allocable to this state:
  - (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or
  - (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.
- (b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.
- (c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

**SECTION 9.** All **business-apportionable** 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 the sales factor, and the denominator of which is three.

**SECTION 10.** The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented used in this state during the tax period

and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

**SECTION 11.** Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

**SECTION 12.** The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the [tax administrator] may require the averaging of monthly values during the tax period of reasonably required to reflect properly the average value of the taxpayer's property.

**SECTION 13.** The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

**SECTION 14.** Compensation is paid in this state if:

- (a) the individual's service is performed entirely within the state; or
- (b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

**SECTION 15.** The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

**SECTION 16.** Sales of tangible personal property are in this state if:

- (a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or
- (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

**SECTION 17.** ~~Sales, other than sales of tangible personal property, are in this state if:~~

- ~~(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.~~

UNIFORMITY COMMITTEE DRAFT WITH STRAW MAN EDITS TO ADDRESS "SALES/SALE" ISSUE:

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

**SECTION 18.** If the allocation and **apportionment** provisions of this Act 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:

- (a) separate accounting;
- (b) the exclusion of any one or more of the factors;
- (c) the inclusion of one or more additional factors which will fairly represent the taxpayer's **business** activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b)(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.

(b)(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).