

Straw Poll (February 25, 2014)

1. Should Section 18 contain an explicit provision stating that the party invoking alternative apportionment should have the burden of proof that the statutory conditions for alternative apportionment have been satisfied? Should the burden of proof be the same for either the taxpayer or the tax administrator? Hearing Officer Report (“Report”), p. 27.

Draft	Hearing Officer Report
WA, MI, ND, Arkansas, MA, CO, MT	MO, Alabama, Idaho (not opposed, more equitable to taxpayers), OR

COMMENTS: NC – Legislature would require burden of proof provision

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2. Should Section 18 prohibit the tax administrator from imposing a penalty on a taxpayer (except in cases where the transactions at issue are the result of tax avoidance such as sham transactions, or lack economic substance, do not reflect arm's length pricing, violate the step transaction doctrine, or otherwise reflect a tax avoidance strategy), when the tax administrator has successfully invoked alternative apportionment but the taxpayer complied with the general apportionment rules in filing its return? Report, p. 29.

Draft	Hearing Officer Report
WA, MI (understands the Hearing Officer's take on the issue), ND (understands the Hearing Officer's take on the issue), MO, Alabama, Arkansas (Hearing Officer proposed change would conflict with statute), MA, NC, CO, MT	Idaho (more equitable to taxpayers), Oregon (leans favorably)

COMMENTS: AL (wants to retain imposition of penalty for future years)

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3. Should the Executive Committee consider the Hearing Officer's redraft of Article IV.1 (a) and (e) (definitions of apportionable and non-apportionable income)? Report, p. 53.

Draft	Hearing Officer Report
MO, Arkansas, MA, CO, OR (leaning)	MI (tentatively), ND (tentatively), Idaho, NC.

COMMENTS: WA, AL, MT abstain

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4. Should receipts from hedging transactions and the treasury function be included in the receipts factor under Article IV.1 (g)? Report, p. 107.

Draft	Hearing Officer Report
MI, MO, AL, ID (tough sell in legislature), Arkansas, MA, NC, CO, OR,	WA (inclined to go with this)

COMMENTS: ND, MT abstain

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5. Should the Executive Committee consider the Hearing Officer's two alternative drafts of Article IV.1 (g) (definition of gross receipts)? Report, p. 111

Draft	Hearing Officer Report
Idaho, Arkansas (but can live with alternative Version 1), MA, CO, OR,	NC (ok that Executive Committee consider)

COMMENTS: WA, MI, ND, MO, AL, MT abstain

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6. Should Section 18 prohibit the tax administrator from retroactively revoking his prior approval of a taxpayer's alternative apportionment method, 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? Report, p. 3

Draft	Hearing Officer Report
WA (covered in existing law), MI, ND, MO, AL, MA, OR, MT	Idaho, Arkansas, NC

COMMENTS: CO (abstain)

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7. Should the use of alternative apportionment under Section 18 be limited to isolated, limited or non-recurring situations? Should the state be required to address issues arising from a common fact pattern or common filing position by regulation rather than by invoking Section 18? Report, p. 32.

Draft	Hearing Officer Report
WA, MI, ND, AL, Idaho, Arkansas, MA, NC, CO, OR, MT	MO (not opposed)

COMMENTS