Resolution Adopting Amendment to Model Regulation IV.18.(a), Addressing Use of Alternative Apportionment Provisions of Compact Article IV, Section 18.

Whereas, in 1973 the Multistate Tax Commission (the Commission") adopted model regulations concerning apportionment of income and losses under Compact Article IV, including Regulation IV.18(a), concerning use of alternative ("equitable") apportionment formulas to more fairly reflect business activity within the taxing states; and

Whereas, the current Model Regulation IV.18.(a) limits the use of alternative apportionment formulas to *inter alia* "unusual fact situations (which will ordinarily be unique and non-recurring)"; and

Whereas, the Commission has concluded that this language could be interpreted to unduly restrict the use of alternative apportionment formulas authorized under Compact Article IV, Section 18; and

Whereas, the Uniformity Committee developed an amendment to Model Regulation IV.18.(a) to delete this language; and

Whereas, the Uniformity Committee in November, 2009 voted to recommend to the Executive Committee that the proposed amendment to Model Regulation IV.18.(a) be considered at a public hearing, and the Executive Committee having approved that recommendation on December 3, 2009; and

Whereas, a public hearing on the proposed amendment to Model Regulation IV.18.(a) was held on January 25, 2010; and

Whereas, the Executive Committee voted to recommend the amendment to Model Regulation IV.18.(a) , with modification, to the Commission on April 7, 2010; and

Whereas, a Bylaw 7 Survey was sent to the States on April 19, 2010, with a majority of States indicating they would consider adoption of such an amendment to Model Regulation IV.18.(a);

Now, therefore, be it:

RESOLVED, that the Compact Member States adopt the attached amendment to Model regulation IV.18.(a) as a Multistate Tax Commission uniformity recommendation to the States.

Stephen Cordi, Chair	Joe Huddleston, Executive Director

Dated: July 28, 2010

Resolution – July 28, 2010
Attached Amendment

Model Regulation IV.18.(a), Addressing Use of Alternative Apportionment Provisions of Compact Article IV, Section 18

Reg. IV.18.(a). Special Rules: In General. Article IV.18. provides that if the allocation and apportionment provisions of Article IV 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:
(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.

Article IV.18. permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases~~. **Article IV.18. may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and non-recurring) produce incongruous results under**~~ where the apportionment and allocation provisions contained in Article IV produce incongruous results.

In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics, and so forth, the foregoing regulations in respect to the apportionment formula ~~**do**~~ may not set forth appropriate procedures for determining the apportionment factors. Nothing in Article IV.18. or in this Regulation IV.18. shall preclude [the tax administrator] from establishing appropriate procedures under Article IV.10. to 17. for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.