



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

To: Robynn Wilson, Chair
Members of MTC Income & Franchise Tax Uniformity Subcommittee
From: Shirley Sicilian, General Counsel
Date: July 14, 2011
Subject: **Model Compact Art. IV.17 Amendments**

I. Background.

At its July, 2009 meeting, the Executive Committee directed that “revisions to Article IV of the Compact - specifically, the five areas suggested as the focus for ULC’s revision project - be referred to the Uniformity Committee and that [the Uniformity Committee] come back to the Executive Committee if the Uniformity Committee recommends the scope of issues be changed.” The five areas are:

1. Sales factor numerator sourcing for transactions other than sales of tangible personal property – Art.IV.17
2. Definition of Sales – Art.IV.1(g)
3. Definition of Business Income – Art.IV.1(a)
4. Factor Weighting – Art. IV.9
5. Distortion Relief Provision - Art.IV.18

The Uniformity Subcommittee started with revisions for item 1, sales factor numerator sourcing for receipts from all transactions other than sales of tangible personal property under §17. This includes receipts from lease of TPP, sale/lease of real property, sale of services, and sale/license of intangibles. The Subcommittee recognized there is overlap between efforts to revise the definition of “sales” under §1(g) and to revise the sourcing for those sales under §17. If the sales are not included in the new definition, then they don’t need to be sourced. So, before finalizing its work on §17, the Subcommittee turned its attention to §1(g). The Subcommittee has also recognized overlapping issues between the definition of “sales” and factor weighting.

The Subcommittee’s goal is to finalize its proposed revisions for §17 (sales numerator sourcing for services and intangibles) and for §1(g) (definition of sales) at its July, 2011 meetings. The agenda for those meetings includes these two items as well as a discussion of factor weighting. If the goal is met, then the next step will be for the Uniformity Committee to consider whether to recommend proceeding to public hearing on these two (or three) provisions or waiting until proposed revisions are ready for the entire UDITPA-related package.

The Subcommittee’s latest draft of model revised section 17 is attached.



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Income & Franchise Tax Uniformity Subcommittee
Model Compact Art. IV.17 Amendments
Draft – for Discussion Purposes Only
As of 3-30-2011

17(a) Sales, other than sales described in Section 16, are in this State if the taxpayer's market for the sale is in this state. The taxpayer's market for a sale 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;
 - (4) In the case of, lease or license of intangible property; or sale or other exchange of such property if the receipts from such sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property; if and to the extent the intangible property is used in this state, provided that intangible property used in marketing a good or service to a consumer is used in this state if the good or service that is marketed using the intangible property is purchased by a consumer who is in this state; and
 - (5) In the case of sale of intangible property other than that referenced in section (4), above; where the property sold is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area; if and to the extent the intangible property is used in or otherwise associated with this state, provided that any sale of intangible property not otherwise described in this section (5) or section (4) above shall be excluded from the numerator and the 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 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.]