



MULTISTATE TAX COMMISSION

**Minutes of Telephonic Meeting of Uniformity Committee's  
Section 18 Regulatory Working Group  
September 6, 2016**

**I. Welcome and Introductions:**

The meeting was called to order by Holly Coon of the Alabama Department of Revenue, Chair, at 3 p.m. EST with approximately 28 participants. Representatives from the states of Alabama, Arkansas, Louisiana, Massachusetts, Missouri, North Dakota, Oregon, Idaho and Washington were in attendance.

**II. Initial Public Comments:**

There were no initial public comments.

**III. Chair's Discussion of Workgroup Priorities:**

Chair Coon asked if any workgroup members had a conflict with the proposed schedule for future meetings (every Tuesday at 3 pm EST). There were no objections.

The Chair then suggested that the workgroup would continue where it left off in May 2016, which was finishing the general model regulation dealing with taxpayers who lacked apportionable receipts under Compact Article IV, section 1. The Chair asked the members if there were other items they would like to consider at this time. Hearing no comments or suggestions, the Chair asked staff to discuss the history of and current status of the general model regulation.

MTC Counsel Bruce Fort recounted that the subcommittee's drafting efforts had been suspended in mid-May following a meeting of the Executive Committee, which had instructed the Uniformity Committee as a whole to consider comments to the proposed model regulations for Compact Article IV, Sections 1 and 17. Those comments included suggestions for broadening the definition of "receipts" to include investment income, hedging and securities transaction receipts (including receipt of dividends) in many circumstances. The proposals were debated by the Uniformity Committee as a whole and largely rejected by the Committee in meetings held in May, June and July, 2016.

#### IV. Continuation of Drafting Efforts on Model General Regulation for Taxpayers with *De Minimis* Amounts of “Receipts” Subject to Apportionment.

The chair asked staff to summarize the operation of the draft model regulation (described as the May 10, 2016 draft with staff comments), highlighting where the subcommittee had not reached a consensus. Mr. Fort described the draft’s structure as including a triggering paragraph, with five cascading methodologies for sourcing a taxpayer’s earnings once the threshold in the introductory paragraph was met.

The first topic addressed was the introductory paragraph to the model regulation. Mr. Fort explained that the group had not reached consensus as to whether there should be a single objective test for triggering the use of the alternative sourcing rules, a single subjective test, or some combination of those two approached. Following extensive discussion, the working group appeared to reach a consensus that the absence of any “receipts” in the taxpayer’s receipts factor numerator (or receipts less than less than 3.33% of gross income) should result in a mandatory use of the alternative apportionment rules set forth in the draft regulation. The working group appeared to agree that a more subjective approach to using the alternative apportionment provisions for the receipts factor calculation might be appropriate for other circumstances, so long as the subjective approach was not too open-ended. The working group also appeared to agree that the subjective standard should follow the statutory standard for invoking section 18 generally and not be limited to distortion in the receipts factor. Staff suggested the following language for the working group’s consideration:

Where the denominator of the taxpayer’s receipts factor as calculated pursuant to [Compact Article IV] is less than 3.33% of the taxpayer’s gross receipts subject to apportionment, the rules set forth herein shall be applied in calculating the taxpayer’s receipts factor. These rules may also apply, in the discretion of the tax commissioner, in other circumstances in which the apportionment formula does not fairly represent the extent of the taxpayer’s business activity in the state.

The Chair asked the working group to consider that language and to be prepared to discuss it next week (September 13, 2016).

The Chair next asked the group to consider Section 1 of the proposed regulation draft, which describes sourcing rules for interest and investment earnings, dividends and capital gains from the disposition of a business or business segment. The group expressed no concerns with the proposed sourcing rules. Staff mentioned that the rules should be clarified to avoid inclusion of investment losses and capital losses. The group agreed that the Model Financial Institutions Apportionment Regulation’s exclusion of “but in no event less than zero” should be used as a model. Staff agreed to draft an incorporation of that language into Section 1.

The chair announced that the remaining sections of the proposed draft would be considered next week.

IV. Adjournment.

The meeting was adjourned at 3:55 p.m. EST.