



To: Wood Miller, Chair
Members of the Uniformity Committee

From: Shirley Sicilian, General Counsel

Date: February 10, 2012

Subject: Compact Art.IV.17 Amendments

In July, 2011, the uniformity committee forwarded its recommended amendments for compact Art.IV.17 (sales factor sourcing for services and intangibles) to the executive committee for consideration for public hearing. [Attachment A.] On December 1, 2011, the executive committee reviewed the draft and asked the uniformity committee to clarify §§ 17(a)(4) and (5), which source receipts from transactions involving intangible property. On January 31, 2012, the income & franchise tax uniformity subcommittee voted to recommend a clarified draft favorably to the full uniformity committee. [Attachment B.] **The issue before the Uniformity Committee is whether to recommend this clarification to the Executive Committee.**

See -

Attachment A: Draft §17 as approved by the uniformity committee in July, 2011 and submitted to the executive committee in December, 2011

Attachment B: Draft §17 with clarifications to §§17(a)(4) and (5) as approved by subcommittee on January 31, 2012

Attachment A



MULTISTATE TAX COMMISSION

Uniformity Committee
Proposed Model Compact Art. IV.17 Recommended Amendments
As recommended to the executive committee
July 24, 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.]

Attachment B



MULTISTATE TAX COMMISSION

Draft Model Compact Art. IV.17

Showing Income & Franchise Tax Uniformity Subcommittee proposed amendments to address Executive committee's request for clarification of §17(a)(4) and (5)

January 31, 2012

- 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.]