
From: Joe Huddleston
Sent: Monday, May 9, 2016 8:44 AM
To: Brian Hamer; Helen Hecht
Cc: Michelle Zahler
Subject: MTC Hearing Officer Report

Brian and Helen,

We wanted to make you aware of certain points that I plan to raise at the hearing scheduled for May 12th. Specifically, we have concerns with the proposed definition of "Receipts" and a specific exception from such definition being proposed to Regulation IV.2.(a)(6)(F) in Section 1 of the Multistate Tax Commission's ("MTC") Model General Allocation and Apportionment Regulations. As proposed and reported in the Hearing Officer report issued on May 1, 2016, the Model General Allocation and Apportionment Regulations proposes to exclude receipts from hedging and lending (of cash or securities) transactions from the definition of "Receipts." While we respect the extensive work conducted over the past two years to develop the recommended changes we find that the changes as proposed may cause issues for taxpayers that should be further analyzed and considered before becoming finalized.

The derivatives and hedging market plays a vital role in today's economy. Also businesses engage in various types of lending transactions, including security lending and/or overall lending. Today's businesses actively engage in such products in the regular course of business to manage risk and increase profit. We understand the complexities surrounding hedging transactions and cause for concern, however we do not agree with the proposal to simply remove such transactions from the definition of receipts altogether. The proposed regulation excluding hedging transactions from the sales factor, yet treating as "apportionable income," runs contrary to its own principals and those established by the U.S. Constitution by failing to create a fair or reasonable approximation of how income is generated for the reasons noted above. As such, we recommend that the MTC reexamine the proposed amendment to exclude hedging and lending transactions from the definition of "receipts." We would be pleased to discuss these comments with you or your staff and work with you in drafting clarifying language.

Overall, we recommend that the MTC reexamine the proposed amendment to MTC's Model General Allocation and Apportionment Regulations which excludes hedging and lending transactions from the definition of "receipts" for the following reasons:

1. The exclusion of hedging transactions and lending from the definition of "receipts" deviates from the purpose UDITPA because it distorts the taxpayer's business income in determining its sales factor.
2. The exclusion of hedging and lending transactions from "receipts" for state purposes is inconsistent with the federal treatment of hedging transactions.
3. The recommended definition of hedging transactions will cause confusion because it is inconsistent with already existing state definitions, which properly identify only specific types of hedging transactions to be excluded.
4. The exclusion of all hedging and lending transactions from the definition of a corporation's receipts is inconsistent with the treatment of hedging and lending transactions for the receipts of financial institutions. Such inconsistent treatment should be further considered so that similarly situated taxpayers would not be subject to differing apportionment standards.

It is important that the MTC revise the proposed regulation to more accurately reflect the business income in the sales factor of corporations engaged in non-distortive hedging and lending transactions. We would be pleased to discuss the Comments with you or your staff if that would be helpful.

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