



**MULTISTATE TAX COMMISSION**

*Maximizing the synergies of multi-state tax cooperation*

**To: MTC Uniformity Committee**

**From: Sheldon Laskin, Acting General Counsel**

**Date: May 22, 2014**

**Subject: Executive Committee Directions to Uniformity Committee to Revise UDITPA Art. IV.18 Draft Proposal**

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The Executive Committee has returned the following provisions of Section 18 to the Uniformity Committee, with instructions to make the indicated revisions to the draft.

1. Adopt the Hearing Officer's proposed Art.IV.18(c), which would impose the burden of proof on the party (either the taxpayer or the tax administrator) seeking to apply an alternative apportionment of the taxpayer's income. The Executive Committee also indicated that the burden of proof should be placed on the taxpayer if the revenue department applied alternative apportionment as a result of the taxpayer's changing its long-standing filing status.

Possible issues to resolve as identified by staff: What is the definition of "long-standing?" What should the standard of proof be in alternative apportionment cases?

2. Adopt the Hearing Officer's proposed Art.IV.18(d), which would bar the tax administrator from imposing a penalty on the taxpayer solely because the taxpayer reasonably relied on the UDITPA allocation and apportionment provisions but the tax administrator requires the taxpayer to use an alternative apportionment method. The Executive Committee also indicated that the tax administrator should be allowed to apply a penalty in alternative apportionment cases, as long as the penalty is unrelated to the taxpayer's reasonable reliance on the UDITPA provisions (i.e., substantial underpayment of tax).

Issue to resolve as directed by Executive Committee: Is the qualifier "solely" as contained in the Hearing Officer's draft sufficiently clear to allow the imposition of penalties where the tax administrator's decision to impose a penalty is unrelated to the taxpayer's reasonable reliance in the UDITPA apportionment provisions? If not, what additional language is necessary to clarify this issue?

3. Adopt the Hearing Officer's proposed Art.IV.18(e), which bars the tax administrator from retroactively revoking its prior approval of alternative apportionment unless there has been a material misrepresentation of, or material change in, the facts provided by the taxpayer upon which the tax administrator reasonably relied.

No issues requiring resolution of this point were identified by the Executive Committee or staff.