



MEMORANDUM

To: Multistate Tax Commission Uniformity Committee
From: Helen Hecht, General Counsel
Regarding: DRAFT of Minutes – Meeting of June 23, 2016 (By Phone)
Date: June 23, 2016

A meeting of the Uniformity Committee was held by phone on June 23, 2016 for the purpose of considering comments on draft amendments to the General Allocation and Apportionment Regulations – Sections 1 and 17 which were referred by the Executive Committee.

Attendees (those who identified themselves):

Wood Miller, Missouri DOR (Chair)
Chris Coffman, Washington DOR (Vice Chair)
Alysse McLoughlin, McDermott Will & Emery
Michael Fatale, Massachusetts DOR
Charles Dendy, North Dakota DOR
Don Jones, Oregon DOR
Jeff Henderson, Oregon DOR
Holly Coon, Alabama DOR
Lennie Collins, North Carolina DOR
Phil Horwitz, Colorado DOR
James Savage, Virginia DOR
Scott Fryer, Arkansas DOR
Frank Crociata, New Mexico DOR
Matt Seltzer, Reed Smith
Helen Hecht, MTC
Bruce Fort, MTC
Lila Disque, MTC
Karl Frieden, COST
Matt Huntley – Virginia DOR
Michelle ? – E&Y
Matt Peyerl – North Dakota DOR
Phil Skinner – Idaho
Nathan Nielson – Idaho
Lee Baerlocher – Montana
Dave Hessberg – Washington DOR
Brad McDougal – Vice Pres. Assoc. Industries of MA

Wood Miller, Chair, welcomed everyone and asked for initial public comments. There were none.

Wood also asked for any changes to draft amendments of June 16, 2016 (as revised and posted on the web page). There were no changes and the minutes were approved without objection.

Wood asked for public comment. Brad McDougal of the Massachusetts Association of Industries spoke in support of the COST comments and suggestions. Karl Frieden of COST also spoke to the change in method of reasonable approximation. COST supports the hearing officer's recommendation to remove restraints under Reg. IV.17.(a)(7)(D) on prospective changes in the method of sourcing. COST also asks that there not be any requirement for greater accuracy when the rules themselves control how the sourcing must be done. COST contends that there are plenty of safeguards built into the rules themselves.

The Committee then turned to the second issue – the removal of the conditions in Reg. IV.17.(a)(7)(D) as recommended by the hearing officer.

- Chris Coffman, Vice Chair, asked staff to update the checklist.
- Holly Coon, Alabama, asked that the committee observe that the second issue on the checklist being taken up was made up of different issues. She also asked that staff capture in the minutes the discussion, in particular if the committee decides to reject the hearing officer's recommendation, so that it is clear what the reasoning behind that decision is.
- Phil Skinner, Idaho, observed that there are three main issues in the changes being discussed under this second issue—the first being whether there should be a requirement for more accuracy in a prospective change. The second being notice, and the third being documentation.
- Phil Horwitz, Colorado, observed that the issues are also connected and, in particular, the first sentence and the second sentence of the regulation are connected. (Phil Skinner agreed that the first and second sentence are connected.)
- Bruce Fort, MTC, suggested that the committee could simply decide if there is a need for an accuracy requirement and that staff could then redraft the first two sentences appropriately.
- Wood noted that in Reg. IV.17.(a)(7)(E), the tax administrator is also limited in changing a method to make it more accurate.
- Matt Peyerl, North Dakota, commented that this was a good point and accuracy was probably a reasonable goal for both.

- Chris Coffman, noted that it was probably difficult to determine accuracy and that it might make the most sense to remove the accuracy requirement from both (D) and (E).
- Scott Fryer, Arkansas, agreed that the requirement should be pulled out of both.
- Frank Crociata, New Mexico, asked whether consistency from year to year wouldn't promote uniformity.
- Karl Frieden, COST, stated the rules need to be clear that prospective changes are allowable, otherwise the rules might be interpreted as not allowing changes.
- Frank Crociata, New Mexico agreed that as long as the method follows the rules changes should be allowed.
- Matt Peyerl, North Dakota noted the change would only apply to a single state, however, not to any other state.
- Alysse McLoughlin, McDermott Will & Emery noted there is case law that would tend to treat each state separately.
- Holly suggested that the committee first vote on whether to accept the hearing officer's recommended changes, to reject any change or to suggest other changes.
- **Phil Skinner made a motion to vote on whether to accept the hearing officer's recommended changes.**
- **That motion was rejected. (Vote - MA-No, AL-No, AR-No, ND-No, MO-Yes, MT-No, ID-No, CO-No, WA-No, OR-No.)**
- Holly suggested that the committee next vote on whether to vote on leaving the language the same. (There was no additional discussion.)
- Lee Baerlocher, Montana, made a motion to remove the accuracy related requirements in both (D) and (E) (and work out the issue of the first sentence with drafting).
- Phil Horwitz recommended that the vote be whether to retain the language as written. (Lee agreed to this.) Phil also recommended that the committee have a fallback position since the Executive Committee might accept the changes of the hearing officer.
- **Holly made a motion to that effect - whether to keep the existing language of Reg. IV.17.(a)(7)(D) as originally written.**
- Phil Skinner commented that it should be clear that a vote in favor of this motion would be a vote to retain the accuracy requirement.
- Phil Horwitz commented that he agreed and wanted the minutes to clearly reflect that he understands COST's position, that the rules already provide some framework, but he disagrees that this alone is sufficient. He therefore believes that a change in method for the sake of change should not be allowed. Accuracy at least provides some standard—it allows changes on a prospective basis, but it provides at least some basis for the change. He also believes that a change that is otherwise required because of change of circumstances

(availability of records) will be allowed no matter what. He also does not believe that taxpayers should be allowed to change for any reason.

- There was some additional discussion about whether to give the Executive Committee an “all or nothing” choice or whether to suggest other possible changes as alternatives.
- Holly revised her motion that the committee vote as to whether their first preference would be to keep the language as originally drafted. The motion passed. (Vote: MA- Y, NC-Y, AL-N, AR-N, MO-N, ND-Y, CO-Y, MT-Y, ID-Y, WA-A, OR-Y.)

Wood then asked what the plan should be for next week’s call. The possible issues are:

- accuracy,
- notice,
- documentation
- the connection between the first and second sentence
- whether (D) might simply reference the requirements of (C), and
- if the accuracy requirement is removed from (D), should it also be removed from (E).

After discussion, the committee agreed that these would be the issues for next week. The committee also instructed staff to schedule and provide notice for a meeting for July 14.