



MEMORANDUM

To: Multistate Tax Commission Uniformity Committee
From: Helen Hecht, General Counsel
Regarding: DRAFT of Minutes – Meeting of June 30, 2016 (By Phone)
Date: June 30, 2016

A meeting of the Uniformity Committee was held by phone on June 30, 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)
Alyse McLoughlin, McDermott Will & Emery
Charles Dendy, North Dakota DOR
Don Jones, Oregon DOR
Jeff Henderson, Oregon DOR
Lennie Collins, North Carolina DOR
Matt Seltzer, Reed Smith
Helen Hecht, MTC
Bruce Fort, MTC
Lila Disque, MTC
Karl Frieden, COST
Catie Oryl, COST
Matt Peyerl, North Dakota DOR
Phil Skinner, Idaho DOR
Lee Baerlocher, Montana DOR
Dee Wald, North Dakota DOR
Karen Boucher, FIST Coalition
Jennifer Hays, Kentucky LRC
Frank Hales, Utah DOR
Gene Walborn, Montana DOR

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 23, 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. There was none.

Checklist Issue No. 2

Wood summarized what had happened on the prior call and asked staff to summarize information relating to issue No. 2 on the checklist (restrictions on taxpayers' ability to change a method of sourcing in Reg. IV.17(a)(7)(D)) and the committee's prior discussion of providing the executive committee with an alternative. The proposal sent by Michael Fatale, Massachusetts, was discussed as a possible alternative. That proposal would change the regulation as follows:

~~"Taxpayer Authority to Change a Method of Assignment on a Prospective Basis. In filing its original return for a tax year, a taxpayer may change its method of assigning its receipts under Reg. IV.17, including changing its method of approximation, from that used on previous returns. However, the taxpayer may only make this change for purposes of improving the accuracy of assigning its receipts consistent with the rules set forth in Reg. IV.17, including, for example, to address the circumstance where there is a change in the information that is available to the taxpayer as relevant for purposes of complying with these rules. Further, a taxpayer that seeks to change its method of assigning its receipts must disclose, in the original return filed for the year of the change, the fact that it is has made the change and must retain and provide to the [tax administrator] upon request documents that explain the nature and extent of the change, and the reason for the change. If a taxpayer fails to adequately disclose the change or retain and provide the required records upon request, the [tax administrator] may disregard the taxpayer's change and substitute an assignment method that the [tax administrator] determines is appropriate."~~

Karl Frieden, COST, commented that it is not clear what a change in method might signify, whether it refers to the application of a different sourcing rule under the regulations or simply a change in some aspect of a method used to apply the same sourcing rule. If it refers to the change in some aspect of a method used, he did not believe it would be a workable provision.

Wood asked that there be a vote on the proposal. The proposal was approved. (NC-Y, ND-Y, AR-Y, UT-Y, MT-Y, ID-Y, OR-Y, MO-Y).

Checklist Issue No. 3

This involves the 5% limit on the use the safe harbor allowing use of billing address for sourcing certain receipts. Phil S. commented that given this the committee had discussed and decided the 5% limitation was reasonable, and that the hearing officer had not seen fit to change it, he was not inclined to reconsider that limit at this point. Lee made a motion to report to the executive committee that the uniformity committee had considered this issue and the comments, as well as the hearing officer's report, and recommended that the provisions in question be retained as drafted. Wood asked that there be a vote. The motion was approved. (NC -Y, ND-Y, MO-Y, UT-Y, MT-Y, ID-Y, OR-Y).

Checklist Issue No. 4

This involves the clarification of the provision on sourcing of receipts for the licensing of a production intangible. Staff summarized the hearing officer's recommendation to clarify the provision by re-ordering the presumptions. Karl Frieden, COST, noted that this did not address the concerns COST had raised and that COST believed there should be no presumption that, if a state finds there is some use of the intangible in the state, all of the use is in the state unless the taxpayer demonstrates otherwise. Phil Skinner asked whether the only change being proposed by the hearing officer was the re-ordering of the presumption and staff confirmed this was the case. Phil made a motion to accept the recommendation of the hearing officer. The motion was approved. (NC-Y, ND-Y, MO-Y, UT-Y, MT-Y, ID-Y, OR-Y)

Checklist Issue No. 5

This issue involved two changes the hearing officer recommended in response to comments submitted by Ben Miller—which were characterized as clarifications. The first involved the change of the word “transacts” to “contracts” in an example. Wood asked the committee to approve this change. The change was approved. (NC-Y, ND-Y, MO-Y, UT-Y, MT-Y, ID-Y, OR-Y)

Wood also asked the members to approve the second hearing officer recommended change to another example to clarify that certain facts included in the example were not relevant to the outcome of that example. The committee approved this change. (NC-Y, ND-Y, MO-Y, UT-Y, MT-Y, ID-Y, OR-Y)

Checklist Issue No. 6

This involved the ABA proposal to include in the regulations some provision for mediation where states employ different methods of sourcing resulting in significant multiple taxation. The ABA was not on the call. Staff attempted to explain the proposal and the comments that had been made to the executive committee. After



discussion, the Committee voted to accept the hearing officer's recommendation that no such provision be included. (NC-Y, ND-Y, MO-Y, UT-Y, MT-Y, ID-Y, OR-Y)

Comments Submitted After the Public Hearing

The Committee then briefly discussed the remaining items to be considered—the new comments which had not been submitted as part of the public hearing but had been raised before the executive committee—

- 1) whether to provide a regulation including hedging receipts in “receipts” and sourcing under Section 17;
- 2) whether to source interest and dividend income under Section 17; and
- 3) whether to delay finalizing amendments to Sections 1 and 17 until work on Section 18 is complete.

Wood noted that on the website there is a memo on these issues from staff (Staff Memo RE: Referral of Issues from the Executive Committee starting at page 9) and Karen Boucher noted that additional comments had also been submitted on June 2 and are also posted on the website.