



UNIFORMITY COMMITTEE
PROPOSED REVIEW PROCESS - MODEL REGULATIONS
APRIL 20, 2022



Proposed Review Process - Model Regulations

Revisiting Proposal from November Meeting:

- Proposed - Staff would review models and come back with recommendations for consolidating/conforming/updating changes to ensure consistency.
- Concerns –
 - Need to have input on issues states are seeing.
 - Need to make sure states are aware of the models and how they work.
 - How to best accomplish all of this.

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Receipts factor in the news:

“MTC Responds to Practitioners’ Call for Market-Sourcing Rules”

Letter to the Editor – Tax Notes State – by Helen Hecht, April 4, 2022

To the Editor,

“This is a response to the article, “Industry-Specific Market Sourcing Rules Needed, Practitioners Argue,” of March 28, 2022. That article reports on a March 18 panel discussion held by the American Bar Association and Institute for Professionals in Taxation. The panel included state and local tax practitioners who commented on the need for specific industry rules and uniformity between the states for market-based sourcing — noting that the states’ general rules are often “broad and vague,” that taxpayers have questions about documentation requirements and fears of multiple taxation, and that specialized industries may need specific rules.

“The article doesn’t say whether the panelists mentioned the efforts of the Multistate Tax Commission in this area. But as the Uniformity Counsel for the MTC, I read what the panelists said as an implicit endorsement of our efforts in drafting market-based sourcing rules.

...

“Finally, the MTC has long had special industry rules that have generally been consistent with market-based sourcing. To the extent additional special industry rules are needed, the MTC always welcomes the input of industry and practitioners, including suggestions as to what the rules should provide. Not only does this serve to foster open discussion on these important issues since our uniformity process is a public process, but it also serves to further the interest of uniformity and equity in taxation.”

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Receipts Factor Trends:

- Market-based sourcing –
 - 35 states – Idaho being the latest
- Single receipts factor –
 - 30 states – Idaho being the latest
- Definition of receipts varies (when combining statutory definitions with regulatory definitions) –
 - From broad to narrow

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Title	Related Documents	Date Adopted or Amended by Commission	General Function
Allocation and Apportionment Regulations			
Model General Allocation and Apportionment Regulations Model in Word	Document Library - archive for Sections 1 and 17 rules. Document Library - archive for Section 18 rules.	Originally adopted 1973; revised multiple times through 2010; amended to implement changes to Art. IV (UDITPA) in 2017 and 2018.	Provides general rules for implementing UDITPA--which is incorporated in the Multistate Tax Compact as Article IV. The current version of the rules implement changes adopted by the MTC to Sections 1, 17, and 18 in 2014 and 2015 to change the definition of "receipts," to source receipts from services and intangibles on a market basis, and to provide additional guidance on the use of equitable apportionment.
Special Rule: Airlines	Airlines Archive	1983	Provides special industry rules for allocating and apportioning the income of airlines and for sourcing receipts, property, and payroll.
Special Rule: Construction Contractors		1980	Provides special industry rules for allocating and apportioning the income of construction contractors.
Special Rule: Publishing	Hearing Officer Report Hearing Officer Report (Interim)	1993	Provides special industry rules for publishers including rules for sourcing advertising receipts using a "circulation factor."

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Title	Related Documents	Date Adopted or Amended by Commission	General Function
Allocation and Apportionment Regulations			
Special Rule: Railroads		1981	Provides special industry rules for allocating and apportioning the income of railroads and for sourcing receipts, property, and payroll.
Special Rule: Television and Radio Broadcasting	Hearing Officer Report (1989) Hearing Officer Report (1995)	Adopted - 1990 Amended – 1996	Provides special industry rules for allocating and apportioning the income from television and radio broadcasters including rules for sourcing receipts using an "audience factor."
Special Rule: Trucking Companies	Hearing Officer Report	Adopted -1986 Amended – 1989	Provides special industry rules for allocating and apportioning the income of trucking companies.
Special Rule: Telecommunications and Ancillary Service Providers	Hearing Officer Report (2008) Supplemental Hearing Officer's Report (2008)	2008	Provides special industry rules for allocating and apportioning income of telecommunications and ancillary service providers.
Special Rule: Receipts Factor - Bank Holding Companies and Subsidiaries	Document Library	2018	Expands the scope of the special industry rules for financial institutions' to include bank holding companies, bank subsidiaries, and savings and loan holding companies and subsidiaries
Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions	Document Library	Original - 1994 Amended – 2015	Provides special industry allocation and apportionment rules for the financial industry. The 2015 version modified the property factor of the original to exclude loans (and therefore disposed of the SINAA test). The 2015 version also modified the receipts factor to increase "market state" orientation and to reflect changes in services provided by the financial industry.

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Recent Litigation:

- Taxpayer who designed interiors of planes for Boeing argued the receipts (under the benefit's received approach) should be sourced to where the airline companies used the airline interiors, not where Boeing manufactured the airline interiors. (Held: For the state.) *Walter Dorwin Teague Assocs. v. Dep't of Revenue*, 500 P.3d 190, 195 (Wash. App. Div. 2 2021).
- Concerning when certain receipts should be included (and sourced) in the receipts factor. *Oracle Corp. v. Dep't of Revenue*, No. TC 5340, 2021 BL 402306 (Or. T.C. Oct. 6, 2021). See also *Chevron U.S.A. Inc. v. Dep't of Revenue*, No. TC-MD 190031N, 2021 BL 144003 (Or. T.C. Apr. 14, 2021)
- Concerning whether a single sales factor that include gain from sale of a business was unconstitutionally skewed. *Vectren Infrastructure Servs. Corp. v. Dep't of Treasury*, No. 345462, 2021 BL 376026 (Mich. Ct. App. Sept. 30, 2021).

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Recent Litigation:

- Concerning the question how an audience factor for a cable TV/broadcasting company should be determined and which viewers (only subscribers or others) should be included in the factor. *Comcast Corp. & Subsidiaries v. Dep't of Revenue, Or.*, No. TC 5265, 2020 BL 460822 (Or. T.C. Nov. 25, 2020).
- Whether a company connecting lenders and borrowers should source receipts based on the location of the lenders or the borrowers in the state. *Lendingtree v. State*, 460 P.3d 640, 641 (Wash. App. Div. 1 2020).
- How to source delivery/transportation services and whether MTC transportation regulations control delivery companies. See *Matter of United Parcel Service Inc. (Ohio) & Affiliates*, No. 19-27, N.M. Admin. Hearings Office (Oct. 25, 2019).

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OECD Pillar 1

February 4, 2022 – issued model rules on economic nexus and revenue sourcing.

- “To determine whether a Covered Group satisfies the nexus test for Amount A in a jurisdiction, it will have to apply the revenue sourcing rules. These rules identify the jurisdiction in which revenue arises for the purposes of Amount A. It does this by identifying the market jurisdiction for a given type of revenue: finished goods, components, services, intangible property, real property, government grants, and non-customer revenues.”
- “The revenue sourcing rules provide a methodology for a Covered Group to use available information to reliably identify the market jurisdiction based on a range of possible indicators, or, in cases where a back-stop is needed, based on an allocation key that is expected to provide a reasonable approximation of the market jurisdiction.”
- These allocation keys are used to provide rules that reasonably approximate the source jurisdiction, are administrable, and avoid disputes. As a last resort, in very specific cases, a back-stop rule is provided in order to ensure that no revenue shall be unsourced.

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OECD Pillar 1:

“The revenue sourcing rules will be supported by detailed record-keeping requirements, based on a systemic-level review of the approach taken to revenue sourcing, rather than a requirement to retain and supply information from every transaction to tax administrations. This means showing a clear, intelligent internal control framework demonstrating a Covered Group’s conceptual approach to revenue sourcing, how it obtains the necessary data and that it has sound internal checks to monitor the accuracy of that data. These detailed requirements will be further elaborated in the standardised documentation requirements contained in the Model Rules, and will be designed in conjunction with tax administrations and businesses.”

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Some OECD draft articles seem very similar:

EXAMPLE – Art. 8. b. Advertising Services:

i. Revenues derived from a transaction for the provision of online Advertising Services arise in [a Jurisdiction] when the Location of the Viewer of the advertisement is in [a Jurisdiction];

ii. Revenues derived from a transaction for the provision of Advertising Services other than those covered in subparagraph (i) arise in [a Jurisdiction] when the place of display or reception of the advertisement is in [a Jurisdiction].

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Some OECD draft articles seem different:

EXAMPLE – Art. 8. c. Online Intermediation Services:

i. Revenues derived from a transaction for the provision of Online Intermediation Services that facilitate the sale or purchase of tangible goods, Digital Goods or Digital Services arise in two places:

a) Half of those Revenues arise in [a Jurisdiction] when the Location of the Purchaser of the tangible goods, Digital Goods or Digital Services is in [a Jurisdiction]; and

b) Half of those Revenues arise in [a Jurisdiction] when the Location of the Seller of the tangible goods, Digital Goods or Digital Services is in [a Jurisdiction].

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Revised Proposal –

- Roll out of MTC market-based sourcing training for the states.
- Use the Standing Subcommittee to begin the process of reviewing the regulations and considering updates and conforming changes.
- Have this be a regular process for the foreseeable future to monitor developments and suggest specific projects if necessary.



THE END



Thanks