

Notes From Uniformity Committee Meeting of 12/14/16:

Regarding subsection (1)(a), instead of “business activity,” Michael Fatale, MA, recommended looking to the apportionment factors of the entity that generated the income. He also objected to the language, because it can be read to cover disposition of stock representing an ownership interest—a much broader concept than intended. Mr. Fatale noted that, in Massachusetts, if a dividend paid by the subsidiary relates to income generated in a single year, they look to the subsidiary's apportionment factor for that year. If the dividend relates to income generated for several years, that approach is less feasible. It may be necessary to allow a blended approach. Several members of the group recommended clarifying the definition of “related party,” which is defined under Section 17 but not in this Section 18 draft. The committee also discussed what to do if a subsidiary pays the dividend through an intermediate affiliate (e.g. holding company) and it was agreed that the rule should “look through” to the factors of the subsidiary that earned the income from which the dividend is paid. There was also some discussion of whether this rule, or the rules under subsections (2)-(4) was the better approach.

As far as capital gains in subsection (1)(b), Mr. Miller recommended considering a hierarchical approach. Ms. Coon, however, noted that the rules in subsections (2)-(4) might also suffice. The committee also discussed the sourcing of gains that are derived from goodwill. There was some agreement that the intro of that subsection is too broad and there were questions whether it needs to be a controlling interest. Also, it may be that the rule should reference the year realized, not recognized, so as to cover installment sales.

In subsection (1)(d) the committee recommended adding in the word “gross” to “receipts.”

In subsection (1)(e) the committee recommended taking out the reference to the Financial Institutions regulations (3)(n) and instead sourcing those receipts to where the investment is managed.

The committee asked whether both subsections (2) and (3) were necessary. It might be possible for states without payroll or property factors to reference the MTC general regulations when using those factors to determine a receipts factor.

The committee also discussed whether there should be a throw-out or throw-back rule in some cases, recognizing that throw-out might leave the taxpayer without a receipts factor, which is what the rule is meant to address. Chair Miller expressed a preference for some examples.