

## **RECOMMENDATION TO ADDRESS THE GENERAL TREATMENT OF DIVIDENDS AND INTEREST UNDER SEC.S 1 AND 17**

### **PROVIDED TO THE UNIFORMITY COMMITTEE**

**JULY 14, 2016**

Phil Skinner, Idaho, will not be on today's call. He asked staff to relay the following information:

The regulations under Sec. 1 and Sec. 17 as amended do not explicitly address the question of whether dividends and interest are generally excluded from the receipts factor. Furthermore, there are some references to dividends and interest in the draft regulations (as currently existing and amended) as follows:

Reg. IV.2.(a)(5) definition of "Gross Receipts" (a component of the definition of "receipts") explicitly includes both interest and dividends within its definition. (See page 42 of the Hearing Officer Report available here: [http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Public-Hearing-3-2016/Hearing-Officer-Report-General-Allocation-and-Apportionment-Regs-\(revised\).pdf.aspx](http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Public-Hearing-3-2016/Hearing-Officer-Report-General-Allocation-and-Appportionment-Regs-(revised).pdf.aspx))

Reg. IV.2.(a)(6)(A) provides, in part, "In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "receipts" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. . . . (See page 42-43 of the Hearing Officer Report)

Reg. IV.15.(c), in identifying what goes in the Receipts Factor Numerator for a particular state, requires that "All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of (1) the place where the accounting records are maintained or (2) the location of the contract or other evidence of indebtedness." (See page 58 of the Hearing Officer Report)

These regulations are not necessarily inconsistent with the view that Sec. 1 (or the application of Sec. 17) now excludes dividends and interest generally from the definition of "receipts." (The term "gross receipts," a component of the narrower definition of "receipts," has always been defined more broadly. Also, treatment of incidental interest charges as part of the receipts from the sale of related goods, rather than the loan of cash, may be a proper application of the Sec. 1 and Sec. 16 provisions.) Even so, Phil suggests that the committee include language in the regulations that will explicitly address the general treatment of receipts from dividends and interest under Sec. 1 and Sec. 17.