



MULTISTATE TAX COMMISSION

**Multistate Tax Commission
Uniformity Committee
Sec. 17 Regulation Project**

SECTION 17 REGULATION PROJECT ISSUE CHECKLIST -

Prepared by MTC Staff and Updated as of November 24, 2014

NOTE: This is a working document, used for discussion by the MTC Uniformity Committee and the Section 17 working group. This checklist will be updated regularly. The checklist does not necessarily reflect the official position of the MTC or any state member or participant.

Issue Checklist

A. General Policy Principles

1. Should market sourcing rules seek to achieve the following:
 - a. Consistency -- in the sourcing result
 - b. Harmonizing existing rules
 - c. Reliability -- in preventing mis-sourcing or manipulation
 - d. Simplicity -- so that:
 - i. Terms used mean the same thing in different contexts;
 - ii. The sourcing rules achieve the same result, as often as possible, regardless of how the sale is characterized;
 - iii. The records required or relied on are generally available; and
 - iv. Sales in similar industries or under similar circumstances are sourced similarly.
 - e. Adaptability -- to allow a logical progression from general rules to more specific rules.

- f. Certainty -- to prevent unexpected issues or questions for tax administrators or traps for taxpayers.
- g. Compatibility -- so that the rules used in sourcing sales for other state tax purposes, especially sales and use taxes, are compatible with the rules adopted.

B. Industries to be Addressed Through Revision of Industry Rules

- 1. Airlines (currently uses departures)
- 2. Construction contractors (currently uses situs)
- 3. Publishing (currently uses a circulation factor)
- 4. Railroads (currently uses a mileage ratio)
- 5. TV Broadcasting (currently uses an audience factor)
- 6. Trucking (currently uses a mileage ratio)
- 7. Telecom (currently uses rules for traditional, mobile, prepaid and private)
- 8. Financial Institutions (recently revised for banks, credit unions, production credit associations and financial leasing organizations)

C. General Structural/Organizational Issues

- 1. Will it work to divide up work between services and intangibles?
- 2. What does a review of the sourcing rules in states with market sourcing reveal about similarities and differences?
- 3. Would adopting certain “procedural” or other general rules help, including:
 - a. Requirement to use good faith (example – MA)
 - b. Safe harbor/threshold for requiring information on receipt (example – MA)
 - c. Request for ruling on method used
 - d. Authority of revenue agency to change method retroactively
 - e. Authority of revenue agency to require change in method prospectively
 - f. Provision for resolving conflicts in sourcing rules (example – AL)
- 4. Does it make sense to address sales to individuals and sales to businesses separately?
- 5. Should intercompany transactions have specific rules?
- 6. Is there agreement that the rules must operate to source the sale to a particular state so that the throw-out rule can be applied?
- 7. In general – when receipts are for delivery of services to multiple locations, should the rules use apportionment or source receipts based on a predominance rule?

8. Should there be general definitions of the terms “services” and “delivery?”
9. Do we need the rules to clearly distinguish between the general requirements and the provisions for reasonable approximation?
10. How should the rules themselves be structured:
 - a. General rules with exceptions
 - b. Hierarchy or cascading rules
 - c. Use of examples

D. Specific Issues Re: Market Sourcing of Services

1. Is there general agreement that “in-person” services that must be or are generally performed with the customer present should be sourced to the physical location of the customer?
 - a. What is the general scope of the category?
 - b. Are there exceptions to this rule?
 - i. Depending on who pays
 - ii. Depending on whether the service is performed entirely where the customer is located (example – blood testing that is sent to another state)
 - iii. Depending on whether the service is performed on the customer’s tangible personal property (example – repairs where the customer brings the property to a taxpayer in the state who sends it outside the state for the actual work)
2. Is there general agreement that services to be performed on or with respect to real property should be sourced to the physical location of the real property?
 - a. What is the general scope of the category?
 - b. Are there exceptions to this rule?
 - i. Depending on whether the service is direct or physically changes the property, or is necessitated by the property or is an indirect service
 - ii. Depending on the nature of the service generally or whether there is another purpose for the service than to benefit the real property