For Discussion Purposes Only

DRAFT Options for Subcommittee Consideration
November 2, 2011

The following list is to generate discussion of Art. IV.9 issues. No inference of endorsement should be made.

Option A: Re-commit to the current factor weighting

Art.IV.9 All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

Option B: Double weight the sales factor

Art.IV.9 All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

Option C: Single sales factor

Art.IV.9 All business income shall be apportioned to this State by multiplying the income by the sales factor.

Option D: Each State's Choice

The model could list optional weightings to acknowledge states' differing tax policies regarding appropriate factor weighting. For example:

COMMITTEE OPTIONS INCLUDE

Art.IV.9 All business income shall be apportioned to this State by multiplying the income by [[EACH STATE CHOOSE EITHER

a fraction, the numerator of which is [X times] the property factor plus [Y times] the payroll factor plus [Z times] the sales factor, and the denominator of which is [the sum of X, Y, and Z].
Or
a fraction, the numerator of which is [X times] the [insert "property," "payroll," or "sales" factor] plus [Y times] the [insert "property," "payroll," or "sales" factor, but not the factor inserted previously] and the denominator of which is [the sum of X and Y].
Or
the [insert "property," "payroll" or "sales"] factor.]]

OR

All business income shall be apportioned to this State by multiplying the income by the apportionment formula provided for [Cite to state factor weighting statute].

OR

All business income shall be apportioned to this State by multiplying the income by an apportionment formula utilizing some or all of the factors provide for in Sections 10 through 17 of this Act

Option E. Taxpayer Election

The model could include an election by which a taxpayer could choose a weighting which will allow it to file uniformly in all (or some minimum percentage) of states in which it is doing business. The concept of a taxpayer election is not unprecedented. Article III.1 currently allows a taxpayer to elect to apportion "in the manner provided by the laws of such States … without reference to this compact, or … in accordance with Article IV." The Art.III.1 election can be made for any tax year and for any one or more Compact states. An election that specifically addresses Article IV.9 could be either an addition to, or a substitute for, Article III.1. Diann Smith, Sutherland, speaking on behalf of various telecommunications, cable, and technology companies, commented to the drafting group that an election is a generally good idea, but it should not be limited to factor-weighting, it should not require all income to be apportioned, and it should not require the election to be made in a high-number of states but preferably allow state-by-state election.

Here is the drafting group's example of options for an election:

Art.IV.9:

(a) All business income shall be apportioned to this State by multiplying the income by a fraction the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four (**OR COMMITTEE INSERT** whatever the general rule should be)

(b) A taxpayer otherwise required to apportion pursuant to Art.IV.9(a) may, as an alternative, make an election [binding for X years] to apportion all [business] income to this state by

COMMITTEE CHOOSE election formula, for example

a fraction, the numerator of which is a multiple of the property factor plus a multiple of the payroll factor plus a multiple of the sales factor, and the denominator of which is the sum of the factor multiples; provided that no factor shall have a multiple less than 1 or greater than 8, and further provided:

OR

either (1) a fraction the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three; or (2) the sales factor; provided:

AND COMMITTEE CHOOSE one or more (or none) of the following election prerequisites

(i) the election is made on an originally filed return by the taxpayer [and all related affiliates],

(ii) the taxpayer [and all related affiliates] apportions all [business] income using an identical apportionment fraction computation in each state in which the taxpayer [or any related affiliate] is taxable as defined in Art.IV.3(1) **[**and such an apportionment fraction computation is allowed, and

(iii) either (1) an identical election is allowed in at least [X] states, or (2) an identical apportionment fraction computation is allowed in at least 90% of the states in which the taxpayer [and related affiliates] is taxable as defined in Art.IV3(1).**]**