

## MTC Model Receipts Sourcing Regulation Review Project

### Notes from 2-16-2023 Work Group Meeting

- I. Welcome – Katie Frank, Chair, gave opening remarks including that she would encourage people to provide comments on issues that may need to be addressed. She also noted that there might be an informal vote on how to proceed on an issue at this meeting.
- II. Initial Public Comment – There was none.
- III. Sourcing of Delivery Receipts – Katie gave some background and also noted the comments that had been submitted by Eric Tresh of Eversheds Sutherland. Katie then noted that they would be having a vote and Eric then asked if he could make some comments. Eric noted that he had not expected that there would be a vote before the group considered the issues he had raised in his memo. Katie clarified that there would be an opportunity not just to vote on two proposed approaches, but also to vote on an alternative approach, and that any vote would not preclude additional discussion and consideration of the issues.

Phil Skinner, Idaho, gave comments on the mileage rule. Phil made the point that we may not want to conflate delivery with deliveries—and that the performance of the service or delivery of the service may actually take place in multiple states. He made the argument that, therefore, mileage would be consistent with that idea of delivery. Brian commented that we have a different rule for transportation by truck and by air. Brian noted that how you look at the essence of the transaction may affect how you would apply the idea of “delivery.” Eric noted that taxpayers have concerns about being taxed more than 100%. But he also wanted to say that the process of transportation and delivery may vary depending on how the transportation is done and even where the “service” is performed or delivered. Phil asked whether one method is more complicated or difficult. Eric responded that in some cases, mileage might better reflect the market and is already in use and that might make the use of pick-up/delivery harder.

Michael Fatale, Massachusetts, gave a different perspective—that the market-based sourcing rules tend to look to the location of the customer. So Massachusetts looked at it as an in-person service. Brian asked whether they had gotten any push-back from affected industries. Eric noted that there have been taxpayers expressing concerns about the MA rule and whether it would always reflect the market. Brian asked Eric whether the mileage rule will always be acceptable, given that UPS has challenged the use of the mileage rule in certain states. Eric responded that it probably depended on the way in which the business is conducted.

Michael Hale, Kansas, asked: Is it possible to mathematically construct a two factor approach? Where mileage and pick-up/drop-off are combined in some manner, then divided as a 2 factor? Similar to 3 factor approach. Or is there such a gulf between the two that it is not feasible?

Helen Hecht, MTC, asked Eric if he could respond to the question as to whether the nature of the service differs significantly in terms of certain types of transportation or delivery services. Eric responded that the nature of the service—delivering items from one location to another location versus delivering lots of items from lots of locations to lots of other locations.

Ben Clough, Iowa, noted that he was trying to reconcile Phil's idea of where the service is delivered to where the market for the service is and whether it really is consistent with mileage.

Ray Langenberg, Texas, commented that maybe the right rule is the one that has long been used (mileage) by most states. But he admitted that he had not looked closely of the cases out of Montana and New Mexico. Michael Fatale also commented that as states move to market-based sourcing, the old rules may not work as well or may need to be changed.

Brian also noted that there were more states that may use some pick-up/delivery or some variation in any least some situations, even though the published rules don't indicate that.

Matt Peyerl, North Dakota, also noted that, in response to Phil, while it may make sense that mileage represents where the service is performed, states that choose to use market-based sourcing may see this as a choice to focus more on delivery than performance.

Katie asked if there were any additional comments. Helen noted the website is getting rebuilt and the page for the project is up. She also noted that it may be possible to provide information on that page that would show the method of determining sourcing for transportation and delivery services that states are currently using.