Summary of Montana and New Mexico decisions regarding sourcing of trucking company receipts

***Montana Dep't of Revenue v. United Parcel Service, Inc.*, 830 P. 2d 1259 (Mont. 1992)**

UPS challenged a tax assessment issued by the Montana Department of Revenue which relied upon the MTC trucking company special industry rule.

Key facts presented by UPS:

- Montana had a population of only 5.4 people per square mile.
- UPS's Montana miles per driver were 148 miles compared to between 47 and 89 miles in other districts in the northwest region.
- UPS transported 1.71. packages per mile in Montana compared with 4.68 to 9.10 packages per mile in other districts in the northwest region.
- During the audit period (1977-1982), Montana package van drivers carried fewer packages per van than drivers in any other state and had the lowest pounds of packages transported.

Montana Supreme Court's holding: The mileage method results in an "inequitable representation of UPS's business activity within Montana."

***New Mexico Public Decision No. 19-27*, New Mexico Administrative Hearings Office (Oct. 25, 2019)**

UPS challenged a tax assessment issued by the New Mexico Department of Taxation & Revenue which relied upon the MTC trucking company special industry rule.

Factual findings:

- UPS had employed the "state to state volume method," rather than the special industry rule, to source receipts in New Mexico and other large geographic, low population states. Under this method, the company assigned 50% of each sale to the originating state and 50% to the destination state, using the highest possible charge for shipment of those packages from the two furthers possible zones within the origin and destination states.
- "Taxpayer's actual 2007 New Mexico billings totaled $56,178,891.00, meaning that the MTC's adjustment to $681,827,729.00 in New Mexico increased Taxpayer's New Mexico revenue 1113% above its actual revenue in the state."
- "Taxpayer's actual 2008 New Mexico billings totaled $53,621,784.00, meaning that the MTC's adjustment to $634,817,086.00 in New Mexico increased Taxpayer's New Mexico revenue 1083% above its actual revenue in the state."
- "Taxpayer's actual 2009 New Mexico billings totaled $50,634,404.00, meaning that the MTC's adjustment of sales to $723,523,285.00 in New Mexico increased Taxpayer's New Mexico sales 1328% above its actual sales in the state."

Key Hearing Officer conclusions:

- Using a mileage method in a large geographic state with a lower population in Taxpayer's line of business can lead to "distortion of the actual business activity in that state."

- Taxpayer in New Mexico and Montana generates very little revenue per mile driven compared to other states and compared to its corporate-wide total generation.
- By demonstrating with clear and cogent evidence that the special trucking apportionment formula increases revenue attribution to New Mexico by 1113%, 1083%, and 1328% respectively, resulting in a huge shift of actual revenue collected in other states to New Mexico well beyond Taxpayer's actual revenue generation in this state, and showing that Taxpayer's revenue generation per mile driven was far less than average and on par with Montana, Taxpayer has established *disproportionate distortion of economic reality contrary to the external consistency requirement* [under the Commerce Clause] and necessitating an equitable adjustment to the formula.
- The reason why there is distortion using a mileage method in a large geographic state with a smaller population is that Taxpayer needs to drive many more miles to get to fewer customers; thus, although Taxpayer's mileage activity suggests it is conducting substantial business in that state, in reality it has less sales per mile than a smaller geographic state with many more customers.
- [Unlike the mileage method,] the state-to-state volume method does fairly and reasonably represent the extent of Taxpayer's business activities in New Mexico.