

MODEL RECEIPTS SOURCING REGULATION REVIEW PROJECT

Status Report to the Uniformity Committee

Austin, Texas

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Description of Project

- August 2, 2022 – the Uniformity Committee agreed to undertake a project and form a work group to review the MTC’s model receipts sourcing regulations, including the MTC’s special industry regulations and its market-based sourcing (“Section 17”) regulations.
- The goal of this project is to identify updates, corrections or conforming changes, to consider issues that may not be sufficiently addressed by existing model regulations, and to make recommendations to the Uniformity Committee for its action.

Initial Topics for Consideration by the Work Group

1. Sourcing of receipts of trucking companies/package delivery companies
2. Sourcing of receipts of airlines from –
 - Selling tickets for travel on unrelated airlines pursuant to code sharing arrangements and capacity purchase agreements
 - Ancillary activities such as transporting a passenger's baggage and selling food
 - Sale of airline points/miles to credit card banks and others

Whether to Revise the MTC Model Special Rule for Trucking Companies –

- The work group has focused on whether to revise the MTC’s special rule for trucking companies in the wake of the MTC’s adoption of market sourcing.
- The trucking company rule, revised most recently in 1989, applies a mileage approach to the sourcing of receipts of trucking companies.
- The rule defines "trucking company" as “a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. . . .”

Why Review the Trucking Rule?

At least two factors motivated the review:

- The trucking company rule proceeded adoption of the MTC's new Section 17 sourcing rules which apply market-based sourcing principles, raising the question of whether the trucking rule comported with the MTC's current approach to sourcing receipts.
- Two published decisions have held that applying the mileage approach to UPS resulted in distortion:
 - *Montana Dep't of Revenue v. United Parcel Service, Inc.*, 830 P.2d 1259 (1992)
 - New Mexico Public Dec. No. 19-27 (*In the Matter of the Protest of United Parcel Service Inc.*), affirmed, N.M. Ct. of Appeals, No. A-1-CA-385855

Possible approaches -

The work group initially considered whether to retain the **mileage approach** or to propose the methodology recently adopted by Massachusetts: looking to the location of **pickups and deliveries**.

The work group discussed the pros and cons of each approach.



Mileage Approach

Pros	Cons
Most states currently use some form of the mileage approach.	Possible legal problems in some states (see Montana and New Mexico court decisions).
Can be said to reflect where the service is delivered (but see below).	May not reflect the many aspects of modern logistics.
Appears to be a workable approach.	Differs from the sourcing rule applied to air transportation, or to ground transportation provided by companies that do not fall under the definition of “trucking company”.
Takes into account that length of trip is a major component of the service that is provided.	Does not reflect the taxpayer’s market in a general sense.

Pickup/Delivery Approach

Pros	Cons
Can be said to reflect where the service is delivered (but see above)	Would require a shift by most states in order to achieve uniformity.
Avoids legal problems identified in Montana and New Mexico decisions.	Requires many businesses to change their current reporting and record-keeping for taxes.
Comports with the way that many states source air transportation.	Does not take into account that length of trip is a major component of the service which is provided.
Reflects the taxpayer's market in a general sense	

Work Group deliberations

- Interestingly, members of the work group divided on whether the current mileage approach was or was not a market-based approach.
- Some members of the work group suggested that the work group consider whether to consider a **two-factor rule**, applying perhaps the mileage approach **and** the pickup/delivery approach.
- There is precedent for adopting a multi-factor receipts approach for transportation: 9 states have adopted a multi-factor approach when sourcing the receipts of airlines.
- The work group considered various arguments for and against applying a two-factor approach to trucking companies and also whether such an approach should be applied to all trucking companies or just to a segment of the industry



Two-Factor Approach

Possible arguments for:	Possible arguments against:
Two factors may better reflect the multiplicity of activities that constitute modern transportation/logistics.	A two-factor approach adds complexity to the tax system.
To date, it appears that there is no consensus among work group members over which single methodology (miles or pickups/deliveries) best reflects a market approach.	The current single factor mileage approach (with occasional adjustments to avoid distortion) is working well.
The question of where the market arguably is fuzzy in this context.	Mileage should not be considered since it does not comport with a market approach to sourcing.
We have discussed two decisions concluding that the mileage approach created distortion in their state; at the same time at least one work group participant has argued that the pickups/deliveries approach may cause distortion in some states.	Pickup locations and/or delivery locations should not be considered since they do not comport with a market approach to sourcing.
Given the different sizes and population densities of states, two factors might serve as a compromise that can work across the country.	The location of pickups and deliveries have little relevance in the case of certain traditional trucking.

Another suggestion proposed

During the course of the discussion whether to adopt a two-factor approach, a related idea was suggested -



Authorize trucking companies to elect whether to apply the mileage rule or the pickup/delivery rule

BUT

Require each company to apply that election in all states in which it operates.

Status of trucking company deliberations -

- An informal poll was taken in April to assess the pulse of the work group with respect to whether the trucking company rule should be modified and if so how.
- It was emphasized that the vote of work group members did not necessarily represent the position of their agency or state.
- Members from eight states participated in the poll (including abstentions). A plurality of voters indicated that the current mileage rule should be maintained but there was no clear consensus.
- Subsequently, a number of work group participants expressed an interest in continuing to explore possible alternatives to the current trucking company rule.

Status of trucking company deliberations -

- In response, the work group chair and MTC staff have suggested that a small study group be convened to drill down deeper on pros and cons of different options, conduct further research, and then report back to the Work Group.
- This study group would consist of both state and industry volunteers.
- The study group would not be a decision-making body. Its sessions would not need to be public. The work group would still be responsible for making any recommendations to the Uniformity Committee after vetting any work product from the study group.

We are looking for feedback from the Uniformity Committee on creating this study group.

Whether to Revise the MTC Model Special Rule for Airlines

Last year, the Oregon Tax Court ruled that airline code share and capacity purchase revenue (i.e., revenue generated by the sale of tickets on other airlines pursuant to various agreements among airline companies) do not constitute “transportation revenue” under Oregon law—which reflects the MTC model special airlines rule.

The affect of that decision was that no part of code share/capacity purchase revenues are included in the numerator of the receipts factor:

$$\left(\frac{\text{weighted in-state departures}}{\text{weighted total departures}} \times \text{transportation revenue} \right) + \text{non-flight revenues directly attributable to this state}$$

Total Transportation Revenue + Miscellaneous sales of merchandise, etc.

“Transportation revenue” means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

Whether to Revise the MTC Model Special Rule for Airlines

- An Oregon attorney who litigated that case proposed that the work group review the MTC special airlines rule and recommend that the definition of **transportation revenue** be modified to clearly capture code share/capacity purchase revenue.
- Subsequent work group discussions have focused on whether the definition of transportation revenue clearly includes:
 - codeshare/capacity purchase revenue
 - ancillary revenue streams that did not exist at the time the rule was adopted (e.g., baggage fees, charges for meals and entertainment)
 - revenue from the sales of point/miles
- At the July 20, 2022 meeting, when asked whether anyone objected to including the above in transportation revenue, no objection was received.

GOING FORWARD

The work group's deliberations have raised the question of whether the MTC should move away from some industry specific rules and instead address their major revenue streams within the §17 market-based sourcing regulations:

- In the modern economy, it is often difficult to define an industry
- Multiple industries may engage in similar activities
- Individual businesses may engage in vastly disparate activities.

Therefore, going forward, we plan to include as part of our deliberations whether to address specific activities giving rise to receipts rather than to address particular industries.

Thoughts?

INVITATION TO TAX ADMINISTRATORS, TAXPAYERS AND INDUSTRY REPRESENTATIVES:

- **Your input is invaluable to ensure a thorough review of the issues. Please consider attending the meetings and providing your thoughts on the matters reviewed.**
- Improve taxpayer guidance by suggesting topics for consideration by the model regs review work group . . . at this meeting, and/or at work group meetings, and/or reach out to:

Brian Hamer, MTC Counsel, at bhamer@mtc.gov

Helen Hecht, MTC Uniformity Counsel, at hhecht@mtc.gov



Consider becoming a regular work group participant

- Staff from 12 states are currently serving as regular group participants.
- Serving as a regular group participant means that you will be a contact person on the project, that you will try to join the calls and follow the work and provide input when you feel you have something to offer, and that if the work group decides to take a vote on a question, we will look to you or colleagues in your state (you can always abstain; one vote per state).
- Casting a vote at a work group meeting does not mean that you are expressing your state's official position.