

# MODEL RECEIPTS SOURCING REGULATION REVIEW PROJECT

## Status Report to the Uniformity Committee

Montclair, New Jersey

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Katie Frank, California Franchise Tax Board  
Work Group Chair

Brian Hamer, MTC  
Jonathan White, MTC

# 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

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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 three factors motivated this review:

- The trucking company rule preceded adoption of the MTC's new Section 17 sourcing rules which apply market-based sourcing principles, raising the question of whether the trucking rule comports 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
- Not all companies that provide trucking services are subject to the same sourcing methodology.

# Possible approaches -

The work group initially considered whether:

- 1) to retain the [mileage approach](#); or
- 2) to propose an approach that looks to the place of [deliveries](#).

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



# Mileage Approach

<b>Pros</b>	<b>Cons</b>
Most states currently use some form of the mileage approach.	Does not reflect the taxpayer's market in a general sense.
Appears to be a workable approach.	Does not reflect the many aspects of modern logistics.
Some work group members suggested that the mileage approach reflects where the service is delivered (but others disagreed).	Differs from the sourcing rule that applies to air transportation and from the rule that applies to ground transportation provided by companies that do not fall under the definition of "trucking company".
Takes into account that length of trip may in some cases be a major component of the service that is provided.	Possible legal problems in some states (see Montana and New Mexico court decisions finding that the mileage approach created distortion).

# Delivery Approach

<b>Pros</b>	<b>Cons</b>
Reflects where the service is delivered, which is the general approach that the MTC has taken to the sourcing of services.	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 a trip may be a major component of the service which is provided.
Reflects the taxpayer's market in a general sense	As states begin to transition to a delivery approach, there may be some some multiple taxation.



# Work Group Deliberations

- 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 a two-factor rule, applying the mileage approach and the pickup/delivery approach.
- The work group also discussed whether to retain the special industry rule for trucking companies (mileage) but to exclude from the definition of “trucking company” express companies/package delivery companies such as UPS and similar companies.

# Another suggestion proposed

During the course of the discussion on 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.

# Work Group 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 withdrawn or 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.

# Whether to Revise the MTC Model Special Rule for Airlines

The work group also has considered whether to revise the 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 tracks the MTC model special airlines rule.

The effect of that decision in Oregon is that no part of code share/capacity purchase revenues is included in the numerator of the receipts factor:

$$\left( \frac{\text{Weighted in-state departures}}{\text{Weighted total departures}} \times \text{Transportation Revenue} \right) + \text{Non-flight revenues directly attributable to this state}$$

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**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.

# Work Group Deliberations

- 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 focused on whether the definition of transportation revenue should expressly include:
  - 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 work group meeting, when asked whether anyone objected to including the above in transportation revenue, no objection was received.

# Work group Deliberations

The work group's deliberations also raised the question of whether the MTC should move away from some industry specific rules and instead address 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.

# Convening of the transportation services study group

With Uniformity Committee approval, MTC staff convened a [study group](#) on transportation services (including ground, air, and water transportation). The study group's purpose is to assist staff in identifying issues relating to the sourcing of transportation receipts, answer questions, and gather information that may be of value to the work group.

The study group consists of 11 volunteers, coming from both states and industry. The call for volunteers was sent to all persons on MTC's Uniformity Committee, Litigation Committee, and Public mailing lists

The study group is not a decision-making body. It is understood by all that participants do not speak on behalf of their employer (unless they indicate otherwise). Relevant information will be forwarded to the work group.

# Study group volunteers

Jon Almeras  
Airlines for America

Nikki Dobay  
Greenberg Traurig LLP

Michael Fatale  
Massachusetts Department of Revenue

Katie Frank  
California Franchise Tax Board

Michael Hale  
Kansas Department of Revenue

Victoria Johnson  
Oregon Department of Revenue

Laurie McElhatton  
California Franchise Tax Board

Valerie Newsom  
Utah Tax Commission

Eric Tresh  
Eversheds Sutherland

Jennifer Young  
Moss Adams

Teresa Zetwick  
Hawaii Department of Revenue



# Study group discussions (1)

During the course of two calls, study group participants have discussed:

- Whether it is possible to draft language distinguishing express or package delivery companies from other trucking companies.
- Implications arising from the current model's definition of "trucking company," which does not encompass all companies that provide transportation via truck.
- Sourcing of receipts of multimodal companies (where different segments of a trip may be subject to different sourcing rules).

# Study group discussions (continued)

- The activities of freight forwarders and how their receipts should be sourced.
- When the application of alternative apportionment results in a taxpayer being subject to different sourcing methodologies in different states.
- Information about how companies in various transportation industries are organized.
- Reaction of affected industries to the possibility of moving from a mileage approach to a deliveries approach.

# Study group discussions

We anticipate at least one more study group call before holding the next work group meeting.

MTC staff also has invited knowledgeable industry and state staff to share relevant information outside of the study group. All relevant information will be reported to the work group.

# INVITATION TO TAX ADMINISTRATORS, TAXPAYERS AND INDUSTRY REPRESENTATIVES:

- **Your input is invaluable to ensure a thorough review of the issues. Please consider attending future work group 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](mailto:bhamer@mtc.gov)

Helen Hecht, MTC Uniformity Counsel, at [hhecht@mtc.gov](mailto:hhecht@mtc.gov)



# Consider becoming a regular work group participant

- Anyone can give input to the work group.
- 12 states have regular work group participants who agree to follow the project and:
  - Review information on the issues discussed;
  - Provide state information and their own experience and opinions;
  - Participate in any deliberations and decisions on recommendations to the uniformity committee including voting on issues.
- Giving input or participating in work group decisions does not mean that you are expressing your state's official position on an issue.