

**MEMORANDUM**

**TO:** Receipts Sourcing Regulations Review work group

**FROM:** Brian Hamer  
Counsel

**RE:** Summary of transportation services study group discussions

**DATE:** January 19, 2024

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**Background**

As you are aware, MTC staff recently convened a study group to assist in identifying issues relating to the sourcing of transportation receipts and to gather information that might be of value to the receipts sourcing regulations review work group. The study group met on three occasions, each time by video conference.

This memorandum is intended to describe the key information MTC staff has taken from the study group discussions. Study group participants may provide their own take on these discussions, either at future work group meetings or otherwise. I have only briefly described the pure policy discussions that the group occasionally engaged in since these discussions mirrored earlier work group discussions and will likely be reprised during future work group deliberations if they are relevant.

The study group consisted of 11 individuals, coming from both states and the private sector. They are listed in the Appendix to this memorandum. MTC staff had issued a call for volunteers to all persons on MTC’s Uniformity Committee, Litigation Committee, and Public mailing lists; all volunteers joined the study group.

It was the common understanding among MTC staff and study group participants that participants did not speak on behalf of their employer or any third party (unless they indicated otherwise) and that the study group was not a MTC decision-making body.

**General focus of study group discussions**

Discussions focused on the implications of moving from the receipts sourcing approach contained in the current MTC trucking company and railroad special industry rules (the “mileage approach”) to an approach based on pickups and/or deliveries for some or all ground transportation services. Participants also discussed the possibility of shifting from sourcing approaches determined by the type of transportation company providing the service (*e.g.*, “trucking company” or railroad), currently used in the MTC special industry rules, to approaches determined by the type of service provided regardless of the type of company. Note that the MTC model general allocation and apportionment regulations use a delivery approach for services provided by fulfillment companies, *see* §17(d)(3)(b)(1).

**Takeaways**

As a policy matter, some study group participants expressed the view that a pickup/delivery approach rather than the mileage approach reflected the market and therefore was best aligned with the

market-based approach to sourcing services which the MTC has adopted. (This was, however, not the universal view.) Many participants also expressed the importance of ensuring that competitors providing similar services are subject to the same sourcing approach.

Some participants stated that the Montana and New Mexico court and administrative decisions involving UPS (which have been discussed by the work group and can be found at [Model Receipts Sourcing Regulation Review Work Group - MTC](#)) stand for the proposition that the mileage approach does not fairly represent business activities of certain transportation companies in a state. But concern was also expressed by some participants that relying on the state-by-state application of alternative apportionment (Art. IV, section 18 of the MTC's model compact – UDITPA) to address this issue might result in some transportation income not being sourced to any state. One participant said that these decisions adopt the principle that the receipts factor should reflect receipts actually received in the state, a principle that the mileage approach conflicts with. Participants did not identify any controversies or audit issues other than the ones addressed in the Montana and New Mexico litigation.

A state participant noted that as a result of the mileage approach some taxpayers have manipulated their business structure and practices to shift income to particular states. For example, they have created multiple entities each engaging in a singular activity to support their overall transportation business and each using a distinct sourcing method. By adopting a uniform pickup/delivery approach for sourcing ground transportation receipts, the tax impact of these practices would be avoided.

Some participants suggested that the mileage approach may have been adopted because cost of performance could not reasonably be applied to ground transportation. Since the MTC has replaced cost of performance with market-based sourcing (and many states have followed suit), there is no longer a reason to retain the mileage approach. Other participants suggested, however, that the mileage approach may have been adopted to reflect the market.

Private sector participants expressed the view that the MTC's mileage approach, which has been adopted by most states, is working well; they stated that problems have been few and far between and can be addressed when they arise (as occurred in Montana and New Mexico). Therefore, there is no compelling reason to change to a pickup/delivery approach and multiple reasons why the mileage approach should not be abandoned. They presented the following particular concerns about changing the current sourcing regime:

- Taxpayer systems are programmed to apply the current mileage approach; replacing or reprogramming those systems to apply a different sourcing rule would take significant time and be expensive.
- The transition from the mileage to a pickup/delivery approach would result in different states having different sourcing rules, at least in the short term if not the long term, potentially resulting in multiple taxation. Moreover, each state might choose to adopt the particular approach that is best for them, thereby undermining uniformity.
- Shifting to a pickup/delivery approach would redistribute tax among states. For example, the tax base might shift to coastal states that have large ports where truckers pick up or deliver substantial freight and to states that have large railroad "hubs" or intermodal facilities.
- Pricing of transportation services is based in part on current sourcing rules; if the rules are changed, volume discounts may have to be changed for example. It also was mentioned that

charges for transportation services may include charges for ancillary services, such as refrigeration. Moving from a mileage approach where charges for such other services are irrelevant to an approach that may take price into account could result in unforeseen consequences.

- Changing the sourcing approach may affect companies differently and therefore have competitive implications.

In response to a number of these concerns, some participants requested both evidence and greater specificity. The private sector participants said they would attempt to gather more information. (No additional evidence or information has been tendered to date.)

Also, MTC staff circulated a chart prepared by Uniformity Counsel Helen Hecht (follow this [link](#) to view). This chart compares highway mileage in each state with the state's GDP and population. GDP and population serve as a proxy for the amount of pickups and deliveries a state might be expected to have. That said, some states (those with ports or hubs) may have more pickups than their GDP would otherwise indicate. Note that, of the five states that would appear to be more significantly adversely affected, two—Montana and New Mexico—were the subject of the equitable apportionment challenges discussed above.

MTC staff asked whether taxpayers have had any problem implementing Massachusetts's shift from the mileage approach to pickups/deliveries. One private sector participant said that "there are issues" with the state's new rule (no details were provided) but it is too early for audits or cases. This participant said that it is easier to accommodate the requirements of one state than to implement a new approach in multiple states. Another participant offered to try to obtain some further feedback from industry operating in Massachusetts. Michael Fatale, the general counsel of the Massachusetts DOR, said he was not aware of any issues that have arisen since his state adopted its pickup/delivery rule.

There was discussion whether it would be possible to draw a line distinguishing those trucking services that might best be covered by the MTC's general market-based sourcing rules (such as services provided by express companies like UPS) from other trucking services that might best be subject to a mileage approach. One participant suggested using a metric that would compare the number of a company's total pickups and/or deliveries to the number of miles its trucks travel. Some participants argued that drawing a line would be very difficult, given the many permutations of businesses providing ground transportation services and also the great differences among states (such as population density and geography).

Study group participants also discussed whether it is a problem that the MTC's railroad and airline sourcing rules do not define the terms railroad and airline. The private sector participants stated that these industries are heavily regulated and that under the applicable regulations railroads and airlines know who they are.

Private sector participants said they were not concerned that some ground transportation companies that provide trucking services are not "trucking companies" as defined by the MTC trucking company rule and therefore not subject to the mileage rule; furthermore, requiring such companies to use the mileage approach may not be realistic. One participant stated that the transportation industry does not expect "full uniformity" and that the current approach makes "the most sense."

Private sector participants also noted that there are many business models used by ground transportation companies and freight forwarders and that over time companies have adjusted their pricing and made other accommodations based on numerous factors including the current sourcing rules.

The private sector participants presumed that when a single company used different modes of transportation to move a package or piece of freight the applicable sourcing method would be applied to each segment of the trip.

A private sector participant stated that application of the mileage approach to apportion railroad income has been in place for many decades without controversy, before UDITPA and before states began to adopt market-based sourcing, and further that the mileage rule reflects business activity. Also, that railroad entities are permitted only to operate a railroad, not other modes of transportation.

## Appendix

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