

MODEL RECEIPTS SOURCING REGULATION REVIEW PROJECT

Status Report to the Uniformity Committee

Kansas City, Missouri

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Description of Project

- At its August 2, 2022 meeting, 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
 - Receipts from selling tickets for travel on unrelated airlines pursuant to code sharing arrangements and capacity purchase agreements
 - Receipts from ancillary activities such as transporting a passenger's baggage and selling food
 - Receipts from the 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 in significant part on whether to revise the MTC's special industry 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 Companies Rule?

At least 3 factors motivated the review of the special industry rule:

- The MTC adopted the rule at a time when UDITPA utilized cost of performance to source receipts, raising the question of whether the 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-38585 5

- Not all companies that provide trucking services are subject to the same sourcing methodology.

Possible approaches

The work group has 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	

Status of work group deliberations

An informal poll was taken last spring to assess the pulse of the work group with respect to whether the trucking company rule should be modified and if so how.

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 sourcing method contained in the current trucking company rule.

Study group discussions

Following last summer's Uniformity Committee meeting, a study group was formed to assist in identifying issues relating to the sourcing of transportation receipts and to gather information that might be of value to the work group.

This study group consisted of 11 state and industry volunteers. It met on three occasions.

Discussions focused on

- (1) the implications of moving from the sourcing methods contained in the current special industry rules to an approach based on pickups and/or deliveries;
- (2) the possibility of shifting from sourcing approaches determined by the type of transportation company providing the service to approaches determined by the type of service provided.

Status of work group deliberations

Shortly after the study group calls, the work group reconvened.

At the work group's meeting in January, a **motion** was made proposing that the MTC staff draft an **optional alternative** to the current MTC trucking company model to source some or all trucking receipts based on pickups and/or deliveries, with the understanding that the draft would be subject to work group review and revision.

Proponents argued that an alternative model would **further uniformity** to the extent that states choose to move away from the mileage approach.

The motion was posted on the work group's project page and circulated to work group members and to the MTC public email list.

The work group **approved** the motion at its February meeting.

Status of work group deliberations

MTC staff subsequently circulated a discussion draft revising the MTC's Model General Allocation & Apportionment Regulation (Section 17).

The current model expressly addresses “product delivery services.” The draft revises this language to read “ground transportation and product delivery services.”

The draft also

- applies a pickups/deliveries method to source receipts from the sale of ground transportation services and delivery services
- carves out the receipts of railroads (which would continue to be addressed by the special industry rule for railroads)
- contains a drafter's note which explains that the MTC has adopted two alternative methods to source receipts of trucking companies.

Status of work group deliberations

At the March meeting of the study group, participants asked questions about the draft and provided initial comments.

MTC staff is now revising the draft, which will be circulated prior to the next work group meeting (tentatively scheduled for June).

Some observations about the process to date

- Attendance at work group meetings has been substantial.
- A relatively small number of states participated in work group polls.
- A work group participant's vote on a matter being discussed does not indicate the position of their state or state tax agency.
- We hope that more state attendees will share their thoughts either during work group meetings or offline. When participants express their opinion they are not speaking on behalf of their state. Only the Commission has the authority to adopt or revise a MTC model.
- We encourage work group participants—and Uniformity Committee members--to provide guidance on how the work group should devote its time.

INVITATION TO TAX ADMINISTRATORS, TAXPAYERS AND INDUSTRY REPRESENTATIVES:

Sourcing issues arise in every state.

Multistate discussions can bolster uniformity and improve the quality of tax administration.

Updating the MTC's model sourcing regulations can serve to improve or expand taxpayer guidance.

For these reasons (and others), please suggest topics for consideration by the model regs review work group at this meeting, at work group meetings, or reach out to MTC staff:

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

Jonathan White, MTC Counsel, at jwhite@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 (voting is not required; one vote per state).

Casting a vote at a work group meeting does not mean that you are expressing your state’s official position.

Contact Brian Hamer at bhamer@mtc.gov to become a regular work group participant.