

••• **Reg. IV.18(h). Special Rules: Television and Radio Broadcasting and Streaming**
[Adopted August 31, 1990; amended April 25, 1996 and _____]

The following special rules ~~are established in respect~~ apply to the apportionment of income from ~~television and radio broadcasting, streaming and licensing of video and audio programming by a broadcaster that taxpayers that are~~ is taxable both in this state and in one or more other states.

Drafter's Note: In 2017, the Commission adopted revised model general allocation and apportionment regulations. Section 17 of those regulations applies market-based sourcing principles to source the receipts from sales of services and intangibles, including receipts from the broadcasting, streaming and licensing of video or audio programming.

This updated version of Regulation IV.18.(h) contains two alternative sections that describe the receipts factor to be used by persons that engage in the business of broadcasting, licensing or streaming of video or audio programming. See Reg. IV.18.(h)(4)(iv) below. Alternative A may be used by those states that have adopted the Commission's revised model Section 17 regulations. Alternative B may be used by those states that have not adopted the revised model Section 17 regulations, including states that continue to use income producing activity/predominant cost of performance principles to source receipts from sales of services and intangibles.

(1) In General. When a person in the business of broadcasting ~~or streaming film video or radio audio~~ programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication ~~including through the Internet, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, or of licensing video or audio programming,~~ has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to ~~[insert reference to the state's general allocation and apportionment statutes and regulations – see model Compact Article IV- and the model General Allocation and Apportionment Regulations] of the Multistate Tax Compact and the regulations issued thereunder by this state,~~ except as modified by this regulation Reg. IV.18(h).

(2) Business and Nonbusiness Income. For definitions, regulations and examples for determining whether income ~~shall be~~ is classified as "business" or "nonbusiness" income, ~~or apportionable or non-apportionable income,~~ see Reg. IV.1.

(3) Definitions. The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(i) "~~Film Video~~" or "~~film-video programming~~" means any and all performances, events or productions ~~telecast broadcast or streamed~~ on television or any other device that displays visual content to viewers, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium. Each episode of a series of ~~films~~ videos produced for ~~television broadcast or streaming~~ shall constitute a separate "~~film~~" "video," notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

(ii) "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of ~~telecasting or~~ broadcasting or streaming, but which are not physically located in any particular state.

(iii) "~~Radio Audio~~" or "~~radio-audio programming~~" means any and all performances, events or productions broadcast or streamed on radio or any other device that delivers audio (but not visual) content to listeners, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium. Each episode of a series of ~~radio audio programming~~ produced for ~~radio broadcast or streaming~~ shall constitute a separate "radio audio programming," notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

(iv) "Release" or "in release" means the placing of ~~film or radio video or audio~~ programming into service. A ~~film or radio video or audio~~ program is placed into service when it is first broadcast or streamed to the primary audience for which the program was created. Thus, for example, a ~~film video~~ is placed in service when it is first publicly ~~telecast broadcast or streamed~~ for entertainment, educational, commercial, artistic or other purpose. Each episode of a television or ~~radio audio~~ series is placed in service when it is first broadcast or streamed. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or streaming or, merely because it is previewed to prospective sponsors or purchasers.

(v) "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of ~~television or radio video or audio~~ programming.

(vi) A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

(vii) "~~Telecast~~" or "~~broadcast~~" (sometimes used interchangeably with respect to television) "Broadcast" means the transmission of ~~television or radio video or audio~~ programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.

(viii) "Stream" or "streaming" means the delivery of audio or video programming over the internet on an on-demand, point-to-point basis, where the content is transmitted only to the specific customer who requests it.

(4) Apportionment of Business Income.

(i) In General. The property factor ~~shall~~ will be determined in accordance with Regulation IV.10 through 12., the payroll factor in accordance with Regulation IV.13. and 14., and the sales/receipts factor in accordance with Regulation IV.15. ~~and 16 through 17.~~, except as modified by this regulation.

(ii) The Property Factor.

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(iii) The Payroll Factor.

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(iv) The Sales Receipts Factor.

[Alternative 1 -- For states that have adopted the MTC's model general allocation and apportionment regulations revised in 2017]

The receipts factor will be determined under Regulation IV.17, including Reg. IV.17.(d)(3) (Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer), Reg. IV.17(e)(2) (License of a Marketing Intangible), and Reg. IV.17(e)(5) (License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services).

Drafter's Note: Since its initial adoption, this Regulation IV.18.(h) has employed a market-based approach to source the receipts of television and radio broadcasting, using audience factor.

In 2017, the Commission adopted revised model general allocation and apportionment regulations. Section 17 of these regulations applies market-based sourcing principles to source the receipts from sales of services and intangibles. In particular, Section 17 applies an audience-type factor to source receipts from video and audio broadcasting, as well as from other services delivered by electronic transmission on behalf of or through customers and from the licensing of certain related intangibles. See Reg. IV.17.

By incorporating Regulation IV.17 by reference into section IV.18.(h)(4)(iv), states that have adopted the MTC's model general allocation and apportionment regulations will update section IV.18.(h)(4)(iv) to clearly address current transactions and more comprehensively reflect the modern economy, while avoiding any confusion that may arise from having in place two regulations that cover overlapping subjects. Those states that have adopted the model general allocation and apportionment regulations and in addition have ceased using property and payroll factors to apportion income (i.e., have adopted single sales factor apportionment) can, as an alternative, simply repeal this Regulation IV.18.(h).

(iv) The Sales Receipts Factor.

[Alternative 2 -- For states that have not adopted the MTC's model general allocation and apportionment regulations revised in 2017]

A. Sales Receipts Factor Denominator.

The denominator of the sales receipts factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under ~~Reg. IV.18.(c)~~ [insert reference to any relevant law].

B. Sales Receipts Factor Numerator.

The numerator of the sales receipts factor shall include all gross receipts of the taxpayer included in the denominator from sources within this state, including, but not limited to, the following:

~~1. Gross receipts, including advertising revenue, from television[,] film or radio programming in release to or by television and radio stations located in this state.~~

~~1.2. Gross receipts~~ Receipts, including advertising revenue, from television[,] film or radio video or audio programming in release to or by a television [or radio] station (independent or unaffiliated) or network of stations or a streaming service for broadcast or streaming shall be attributed to this state in the ratio (hereafter "audience factor") that the audience located in this state for such station (or owned and affiliated stations in the case of networks) or streaming service located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks) or streaming service.*

The audience factor for ~~television or radio video or audio programming~~ shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state. In the absence of customer location information or published statistics, the taxpayer shall use customer billing addresses to determine the audience factor. If the taxpayer does not have access to billing addresses, then it shall approximate the audience factor using a ratio derived from relevant population statistics, provided that these statistics reasonably reflect the actual market for the programming both in and outside the state.

~~2.3. Gross receipts~~ Receipts from film video programming in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.

~~3.4.~~ Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales receipts factor as provided in ~~Reg. IV. 16~~ [insert reference to any relevant law].

4. Receipts from the licensing of video or audio programming to a licensee that in turn will offer the programming to its customers shall be attributed to this state in the ratio that the licensee's audience in this state for such programming bears to the licensee's total U.S. audience for such programming. If the taxpayer lacks sufficient information regarding the location of the audience, then the taxpayer shall use published rating statistics or, in the absence of published statistics, shall approximate the location of the audience using a ratio derived from relevant population statistics, provided that these statistics reasonably reflect the actual market for the programming both in and outside the state.

*The bracketed words and commas in the text of Section B above the asterisk on page 4 do not appear in the version of the Regulation that is posted on the MTC's website. However, they were contained in the original form of the regulation adopted in 1990 and MTC staff has not found any evidence that they were removed by the 1996 amendment. There does not seem to be any reason why they would have been deleted. See MTC Resolution Regarding Adoption of Proposed Allocation and Apportionment Regulation IV.18.(h)(with attached regulation), adopted Aug. 31, 1990.