

**Draft of Rule for Sourcing Transportation Receipts
Using Pick-Up and Delivery
For Discussion Purposes Only
6/2/2024**

Note: The proposed draft changes are included in the MTC’s Model General Allocation and Apportionment Regulations for Compact Art. IV (UDITPA), Secs. 17, 18.

•• Reg. IV.17.(a). Receipts Factor: Sales Other Than Sales of Tangible Personal Property in This State: General Rules.

In general, Article IV.17. provides for the inclusion in the numerator of the receipts factor of gross receipts arising from transactions other than sales of tangible personal property.

(1) Market-Based Sourcing.

Receipts, other than receipts described in Article IV.16 (from sales of tangible personal property) are in [state] within the meaning of Article IV.17 and this Reg. IV.17 if and to the extent that the taxpayer’s market for the sales is in [state]. In general, the provisions in this section establish uniform rules for (1) determining whether and to what extent the market for a sale other than the sale of tangible personal property is in [state], (2) reasonably approximating the state or states of assignment where the state or states cannot be determined, (3) excluding receipts from the sale of intangible property from the numerator and denominator of the receipts factor pursuant to Article IV.17(a)(4)(ii)(c), and (4) excluding receipts from the denominator of the receipts factor, pursuant to Article IV.17(c) where the state or states of assignment cannot be determined or reasonably approximated, or where the taxpayer is not taxable in the state to which the receipts are assigned as determined under Article IV.3 and applicable regulations,

(2) Outline of topics.

The provisions in this Reg. IV.17 are organized as follows:

- (a) General Rules
 - (1) Market-Based Sourcing

- (2) Outline of Topics
- (3) Definitions
- (4) General Principles of Application; Contemporaneous Records
- (5) Rules of Reasonable Approximation
- (6) Rules with respect to Exclusion of Receipts from the Receipts Factor
- (7) Changes in Methodology; [tax administrator] Review
- (8) Further Guidance
- (b) Sale, Rental, Lease or License of Real Property
- (c) Rental, Lease or License of Tangible Personal Property
- (d) Sale of a Service
 - (1) General Rule
 - (2) In-Person Services
 - (3) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer
 - (4) Professional Services
- (e) License or Lease of Intangible Property
 - (1) General Rules
 - (2) License of a Marketing Intangible
 - (3) License of a Production Intangible
 - (4) License of a Mixed Intangible
 - (5) License of Intangible Property where Substance of the Transaction Resembles a Sale of Goods or Services
- (f) Sale of Intangible Property
 - (1) Assignment of Receipts
- (g) Special Rules
 - (1) Software Transactions
 - (2) Sales or Licenses of Digital Goods and Services

(3) Definitions.

For the purposes of this Reg. IV.17 these terms have the following meanings:

- (A) “Billing address” means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer’s account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.
- (B) “Business customer” means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state or local government, or to an agency

or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.

- (C) “Code” means the Internal Revenue Code as currently written and subsequently amended.
- (D) “Individual customer” means a customer that is not a business customer.
- (E) “Intangible property” generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and, except as otherwise provided in Reg. IV.17, computer software. Receipts from the sale of intangible property may be excluded from the numerator and denominator of the taxpayer’s receipts factor pursuant to Article IV.17 and [Reg. IV.17.\(f\).\(1\)\(D\)](#).
- (F) “Place of order,” means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.
- (G) “Population” means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.
- (H) “Related party” means:
- (1) a stockholder who is an individual, or a member of the stockholder's family set forth in section 318 of the Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock;
 - (2) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock; or
 - (3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party

to the corporation under the attribution rules of the Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 per cent of the value of the corporation's outstanding stock. The attribution rules of the Code shall apply for purposes of determining whether the ownership requirements of this definition have been met. [or insert state definition]

- (I) “State where a contract of sale is principally managed by the customer,” means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

(4) General Principles of Application; Contemporaneous Records.

In order to satisfy the requirements of Reg. IV.17, a taxpayer’s assignment of receipts from sales of other than tangible personal property must be consistent with the following principles:

- (A) A taxpayer shall apply the rules set forth in Reg. IV.17 based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer’s books and records kept in the normal course of business. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the [Agency] upon request.
- (B) Reg. IV.17 provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

(C) A taxpayer’s method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the regulatory standards set forth in Reg. IV.17, rather than an attempt to lower the taxpayer’s tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(5) Rules of Reasonable Approximation.

(A) In General. In general, Reg. IV.17 establishes uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in [state]. The regulation also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation prescribed in Reg. IV.17. In other cases, the applicable rule in Reg. IV.17 permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in Reg. IV.17.

(B) Approximation Based Upon Known Sales. In an instance where, applying the applicable rules set forth in [Reg. IV.17.\(d\)](#). (Sale of a Service), a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services (“assigned receipts”), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This rule also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services. *See* [Reg.s IV.17.\(e\).\(5\)](#) and [\(f\).\(1\)\(C\)](#).

(C) Related-Party Transactions – Information Imputed from Customer to Taxpayer. Where a taxpayer has receipts subject to this Reg. IV.17 from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

(6) Rules with Respect to Exclusion of Receipts from the Receipts Factor

- (A) The receipts factor only includes those amounts defined as receipts under Article IV.1(g) and applicable regulations.
 - (B) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to Article IV.17(a)(4)(ii)(C). *See* [Reg. IV.17.\(f\).\(1\)\(D\)](#).
 - (C) In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to the applicable rules set forth in Reg. IV.17 (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV. 17.(c). and these regulations.
 - (D) In a case in which a taxpayer can ascertain the state or states to which receipts from a sale are to be assigned pursuant to the applicable rules set forth in Reg. IV.17, but the taxpayer is not taxable in one or more of those states, pursuant to Article IV.3 and applicable regulations, the receipts that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV.17.(c).
 - (E) Receipts of a taxpayer from hedging transactions, or from holding cash or securities, or from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities, shall be excluded pursuant to Article IV.1.(g) and Art. IV.17.
- (7) Changes in Methodology; [tax administrator] Review
- (A) No Limitation on Article IV.18 or Reg. IV.18. Nothing in the regulations adopted here pursuant to Article IV.17 is intended to limit the application of Article IV.18 or the authority granted to [the tax administrator] under Section 18. To the extent that regulations adopted pursuant to Section 18 conflict with provisions of these regulations adopted pursuant to Section 17, the regulations adopted pursuant to Section 18 control. If the application of Section 17 or the regulations adopted pursuant thereto result in the attribution of receipts to the taxpayer's receipts factor that does not fairly represent the extent of the taxpayer's business activity in [state], the taxpayer may petition for or [the tax administrator] may require the use of a different method for attributing those receipts.
 - (B) General Rules Applicable to Original Returns. In any case in which a taxpayer files an original return for a taxable year in which it properly assigns its receipts using a method of assignment, including a method of reasonable approximation,

in accordance with the rules stated in Reg. IV.17., the application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state or states of assignment to which the method is properly applied. In those cases, neither [the tax administrator] nor the taxpayer (through the form of an audit adjustment, amended return, abatement application or otherwise) may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year. However, [the tax administrator] and the taxpayer may each subsequently, through the applicable administrative process, correct factual errors or calculation errors with respect to the taxpayer's application of its filing methodology.

(C) [Tax Administrator] Authority to Adjust a Taxpayer's Return. The provisions contained in this Reg. IV.17.(a)(7)(C) are subject to Reg. IV. 17.(a)(7)(B). The [tax administrator's] ability to review and adjust a taxpayer's assignment of receipts on a return to more accurately assign receipts consistently with the rules or standards of Reg. IV.17, includes, but is not limited to, each of the following potential actions.

1. In a case in which a taxpayer fails to properly assign receipts from a sale in accordance with the rules set forth in Reg. IV.17, including the failure to properly apply a hierarchy of rules consistent with the principles of [Reg. IV.17.\(a\).\(4\)\(B\)](#), [the tax administrator] may adjust the assignment of the receipts in accordance with the applicable rules in Reg. IV.17.
2. In a case in which a taxpayer uses a method of approximation to assign its receipts and [the tax administrator] determines that the method of approximation employed by the taxpayer is not reasonable, the [tax administrator] may substitute a method of approximation that the [tax administrator] determines is appropriate or may exclude the receipts from the taxpayer's numerator and denominator, as appropriate.
3. In a case in which [the tax administrator] determines that a taxpayer's method of approximation is reasonable, but has not been applied in a consistent manner with respect to similar transactions or year to year, the [tax administrator] may require that the taxpayer apply its method of approximation in a consistent manner.
4. In a case in which a taxpayer excludes receipts from the denominator of its receipts factor on the theory that the assignment of the receipts cannot be reasonably approximated, the [tax administrator] may determine that the

exclusion of those receipts is not appropriate, and may instead substitute a method of approximation that the [tax administrator] determines is appropriate.

5. In a case in which a taxpayer fails to retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, or fails to provide those records to [the tax administrator] upon request, the [tax administrator] may treat the taxpayer's assignment of receipts as unsubstantiated, and may adjust the assignment of the receipts in a manner consistent with the applicable rules in Reg. IV.17.
6. In a case in which the [tax administrator] concludes that a customer's billing address was selected by the taxpayer for tax avoidance purposes, the [tax administrator] may adjust the assignment of receipts from sales to that customer in a manner consistent with the applicable rules in Reg. IV.17.

(D) Taxpayer Authority to Change a Method of Assignment on a Prospective Basis. A taxpayer that seeks to change its method of assigning its receipts under Reg. IV.17 must disclose, in the original return filed for the year of the change, the fact that it has made the change. If a taxpayer fails to adequately disclose the change, the [tax administrator] may disregard the taxpayer's change and substitute an assignment method that the [tax administrator] determines is appropriate.”

(E)[Tax administrator] Authority to Change a Method of Assignment on a Prospective Basis. The [tax administrator] may direct a taxpayer to change its method of assigning its receipts in tax returns that have not yet been filed, including changing the taxpayer's method of approximation, if upon reviewing the taxpayer's filing methodology applied for a prior tax year, [the tax administrator] determines that the change is appropriate to reflect a more accurate assignment of the taxpayer's receipts within the meaning of Reg. IV.17, and determines that the change can be reasonably adopted by the taxpayer. [the tax administrator] will provide the taxpayer with a written explanation as to the reason for making the change. In a case in which a taxpayer fails to comply with [the tax administrator]'s direction on subsequently filed returns, [the tax administrator] may deem the taxpayer's method of assigning its receipts on those returns to be unreasonable, and may substitute an assignment method that the [tax administrator] determines is appropriate.

(8) Further Guidance.

The [tax administrator] may issue further public written statements with respect to the rules set forth in Reg. IV.17. These statements may, among other things, include guidance with respect to: (1) what constitutes a reasonable method of approximation

within the meaning of the rules, and (2) the circumstances in which a filing change with respect to a taxpayer's method of reasonable approximation will be deemed appropriate.

•• Reg. IV.17.(b). Sale, Rental, Lease or License of Real Property..

In the case of a sale, rental, lease or license of real property, the receipts from the sale are in [state] if and to the extent that the property is in [state].

•• Reg. IV.17.(c). Rental, Lease or License of Tangible Personal Property.

In the case of a rental, lease or license of tangible personal property, the receipts from the sale are in [state] if and to the extent that the property is in [state]. If property is mobile property that is located both within and without [state] during the period of the lease or other contract, the receipts assigned to [state] are the receipts from the contract period multiplied by the fraction computed under Reg. IV.10.(d). (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

•• Reg. IV.17.(d). Sale of a Service.

(1) General Rule.

The receipts from a sale of a service are in [state] if and to the extent that the service is delivered to a location in [state]. In general, the term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth at [Reg.s IV.17.\(d\).\(2\)-\(4\)](#).

(2) In-Person Services.

(A) In General.

Except as otherwise provided in this Reg. IV.17.(d).(2), in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation,

warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing, x-rays and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer's real or tangible personal property. Various professional services, including legal, accounting, financial and consulting services, and other similar services as described in [Reg. IV.17.\(d\).\(4\)](#), although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this Reg. IV.17.(d).(2).

(B) Assignment of Receipts.

1. Rule of Determination. Except as otherwise provided in this [Reg. IV.17.\(d\).\(2\)\(B\)](#), if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in [state] if and to the extent the customer receives the in-person service in [state]. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows:
 - a. If the service is performed with respect to the body of an individual customer in [state] (e.g. hair cutting or x-ray services) or in the physical presence of the customer in [state] (e.g. live entertainment or athletic performances), the service is received in [state].
 - b. If the service is performed with respect to the customer's real estate in [state] or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in [state], the service is received in [state].
 - c. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside [state], the service is received in [state] if the property is shipped or delivered to the customer in [state].

(C) Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has

sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. If the state to which the receipts are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to the state are excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV.17.(c). and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

(D) Examples.

In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement that the receipts from the sale or sales be eliminated from the denominator of the taxpayer's receipts factor. See Article IV.17.(c). and [Reg. IV.17.\(a\).\(6\)\(D\)](#). Note that for purposes of the examples it is irrelevant whether the services are performed by an employee of the taxpayer or by an independent contractor acting on the taxpayer's behalf.

Example (i). Salon Corp has retail locations in [state] and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's in-state locations are in [state]. The receipts from sales of services provided at Salon Corp's locations outside [state], even when provided to residents of [state], are not receipts from in-state sales.

Example (ii). Landscape Corp provides landscaping and gardening services in [state] and in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who is a resident of another state and who is located outside [state] at the time the services are performed. The receipts from sale of services provided at the in-state location are in [state].

Example (iii). Same facts as in Example (ii), except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in [state] and in other states. The receipts from the sale of services provided to Retail Corp are in [state] to the extent the services are provided in [state].

Example (iv). Camera Corp provides camera repair services at an in-state retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its in-state location at a facility that is in another state. In these cases, the repaired camera is then returned to the customer at Camera Corp's in-state location. The receipts from sale of these services are in [state].

Example (v). Same facts as in Example (iv), except that a customer located in [state] mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in [state] by mail. The receipts from sale of the service are in [state].

Example (vi). Teaching Corp provides seminars in [state] to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state, the teachers who teach the seminars include teachers that are resident outside the state, and the students who attend the seminars include students that are resident outside the state. Because the seminars are taught in [state] the receipts from sales of the services are in [state].

(3) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.

(A) In General.

If the service provided by the taxpayer is not an in-person service within the meaning of [Reg. IV.17.\(d\).\(2\)](#) or a professional service within the meaning of [Reg. IV.17\(d\)\(4\)](#), and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in [state] if and to the extent that the service is delivered in [state]. For purposes of this Reg. IV.17.(d).(3), a service that is delivered “to” a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered “on behalf of” a customer is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience (see [Reg. IV.17.\(d\).\(3\)\(B\)1](#) and [Example \(iv\)](#) under (d).(3)(B)1.c.). A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically “through” a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(B) Assignment of Receipts.

The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this Reg. IV.17.(d).(3), a service delivered by an electronic transmission is not a delivery by a physical means). If a rule of assignment set forth in this Reg. IV.17.(d).(3), depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. If the state to which the receipts from a sale are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to that state are excluded from the denominator of the taxpayer's receipts factor. *See* Article IV.17(c) and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

1. Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example, [ground transportation and](#) product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation) where the taxpayer installs the custom software at the customer's site. The rules in this Reg. IV.17.(d).(3)(B)1. apply whether the taxpayer's customer is an individual customer or a business customer.
 - a. Rule of Determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.
 - b. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the

state or states where the service is delivered, it shall reasonably approximate the state or states.

c. Ground Transportation and Product Delivery Services

[DRAFTER'S NOTE

The Commission has adopted two alternative methods to source receipts of trucking companies: the approach set forth in this Reg. IV.17.(d).(3)(B)(1)(c) and the approach set forth in subsection iv of the special rules for Trucking Companies (Reg. IV.18.(g)). The special industries 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." A state that has adopted Reg. IV.18.(g) will not apply this Reg. IV.17.(d).(3)(B)(1)(c) with respect to any trucking company.

If a trucking company is subjected to the sourcing approach set forth in this Reg. IV.17.(d).(3)(B)(1)(c) by one or more states and to the sourcing approach set forth in Reg. IV.18(g) by one or more other states, then under Reg. IV.17.(b) the taxpayer may petition for, and any affected state tax authority may participate in, and encourage the other state taxing authorities to participate in, non-binding mediation in accordance with the alternative dispute resolution rules promulgated by the Multistate Tax Commission. See Reg. IV.17.(b).

This Reg. IV.17.(d).(3)(B)(1)(c) does not apply to receipts of railroads, which is governed by the special rules for Railroads (Reg. IV.18.(f)).]

- i. Receipts from the sale of ground transportation and product delivery services, other than receipts of railroads covered by Reg. IV. 18(f), are assigned to [state] if [state] is the state of delivery in the case of the transportation of tangible personal property or the state of arrival in the case of the transportation of individuals.
- ii. Ground transportation and product delivery services include the services provided by a freight forwarder, logistics company, or other taxpayer that organizes or coordinates the shipment of tangible personal property on behalf of another party unless the taxpayer does not itself transport the tangible personal property or contract with another party to transport the personal property.
- iii. For purposes of this Reg. IV.17.(d).(3)(B)(1)(c), the location of "delivery" or "arrival" is the location where the taxpayer is obligated

to deliver an item of tangible personal property or an individual, whether the taxpayer transports the tangible personal property or the individual itself or enters into a subcontract under which a third party provides the transportation.

- iv. This Reg. IV.17.(d).(3)(B)(1)(c) applies to the receipts of marketplace facilitators, as defined by [state statute], but only with respect to transactions where the marketplace facilitator has agreed to transport the seller's tangible personal property to the seller's customer or to the designee of the seller's customer.

e.d. Examples:

In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no requirement in these examples that the receipts must be eliminated from the denominator of the taxpayer's receipts factor. See Article IV.17.(c). and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

Example (i). Direct Mail Corp, a corporation based outside [state], provides direct mail services to its customer, Business Corp. Business Corp contracts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in [state] and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from the sale of Direct Mail Corp's services to Business Corp are assigned to [state] to the extent that the services are delivered on behalf of Business Corp to [state] customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in [state]).

Example (ii). Ad Corp is a corporation based outside [state] that provides advertising and advertising-related services in [state] and in neighboring states. Ad Corp enters into a contract at a location outside [state] with an individual customer who is not a [state] resident to design advertisements for billboards to be displayed in [state], and to design fliers to be mailed to [state] residents. All of the design work is performed outside [state]. The receipts from the sale of the design services are in [state] because the service is physically delivered on behalf of the customer to the customer's intended audience in [state].

Example (iii). Same facts as example (ii), except that the contract is with a business customer that is based outside [state]. The receipts from the sale of the design services are in [state] because the services are physically delivered on behalf of the customer to the customer's intended audience in [state].

Example (iv). Fulfillment Corp, a corporation based outside [state], provides product delivery fulfillment services in [state] and in neighboring states to Sales Corp, a corporation located outside [state] that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases when a customer purchases tangible personal property from Sales Corp to be delivered in [state], Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside [state]. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp are assigned to [state] to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in [state].

Example (v). Transit Corp. sells a roundtrip bus ticket from a town in [state] to a city in state X. The price of this roundtrip ticket is \$50. \$25 is assigned to [state] since [state] is the state of arrival for the return trip.

Example (vi). Transit Corp. sells a one-way bus ticket from a city in state Y to a city in [state]. The price of this ticket is \$40. The passenger must switch buses at a bus depot in state Y. \$40 is assigned to [state] since [state] is the state of arrival.

Example (vii). DEF Trucking Corp. enters into a contract with Seller, Inc. to pick up refrigerators which are stored at Seller's warehouse in state Z and deliver them to Seller's customers in [state]. DEF Trucking subcontracts with Railroad Co. to transport those refrigerators from an intermodal facility in state Z to an intermodal facility in [state]. Using its trucks, DEF Trucking Corp. transports the refrigerators from Seller's warehouse to Railroad Co.'s intermodal facility in state Z. DEF Trucking Co. also subcontracts with PDQ Trucking Co. Under this subcontract, PDQ picks up the refrigerators from Railroad Co.'s intermodal facility in [state] and delivers them to Seller's customers in [state].

All of DEF Trucking Co.'s revenues arising from its contract with Seller are assigned to [state] since DEF's agreement with the Seller is to deliver the refrigerators to the Seller's customers in [state]. Since Railroad Co. is a railroad, its revenues are sourced pursuant to the special rules for Railroads (Reg. IV.18.(f)). PDQ Trucking Co.'s revenues arising from its contract with DEF

Trucking Co. are assigned to [state] since pursuant to that contract all refrigerators are delivered to customers in [state].

Example (viii). Danube Corp., a marketplace facilitator, enters into a contract with Small Seller, Inc. to market Small Seller's products on Danube's website and to process orders. Under the contract, Danube also agrees to store Small Seller's products in Danube warehouses around the country and to deliver those products to purchasers. The contract provides that Small Seller will pay Danube a fee of \$15 for every Small Seller product sold on Danube's website. During the taxable year, customers in [state] purchase 1000 Small Seller products on Danube's website. The \$15,000 is assigned to [state].

Example (ix). Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in [state], to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside [state], and then physically installs the software on Buyer Corp's computer hardware located in [state]. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale are assigned to [state] because the software is physically delivered to the customer in [state].

Example (ix). Same facts as Example (ix), except that Buyer Corp has offices in [state] and several other states, but is commercially domiciled outside [state] and orders the software from a location outside [state]. The receipts from the development and sale of the custom software service are assigned to [state] because the software is physically delivered to the customer in [state].

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•• Reg. IV.17.(h). Mediation.

Whenever a taxpayer is subjected to different sourcing methodologies regarding intangibles or services, by the [State Tax Agency] and one or more other state taxing authorities, the taxpayer may petition for, and the [State Tax Agency] may participate in, and encourage the other state taxing authorities to participate in, non-binding mediation in accordance with the alternative dispute resolution rules promulgated by the Multistate Tax Commission from time to time, regardless of whether all the state taxing authorities are members of the Multistate Tax Compact.

•• Reg. IV.18.(a). **Special Rules: In General.** Article IV.18. provides that if the allocation and apportionment provisions of Article IV do not fairly represent the extent

of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one or more of the factors;
- (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article IV.18. permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases where the apportionment and allocation provisions contained in Article IV produce incongruous results.

In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics, and so forth, the foregoing regulations in respect to the apportionment formula may not set forth appropriate procedures for determining the apportionment factors. Nothing in Article IV.18. or in this Regulation IV.18. shall preclude [the tax administrator] from establishing appropriate procedures under Article IV.10. to 17. for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.

If a taxpayer has petitioned to use an alternative method of apportionment in another state and has received permission to use that alternative method in that state, then the taxpayer must submit a copy of that petition to the [tax administrator] who shall determine whether that method should also be used in [state] for the tax years covered by the petition.