



TO: Members of the Uniformity Committee

FROM: Brian Hamer
Helen Hecht
Jonathan White

RE: Sourcing Regulations Review Work Group update and request for guidance

DATE: July 19, 2024

Background

Since the Receipts Sourcing Regulations Review Work Group (the “work group”) first convened in late 2022, it has focused in large part on whether the MTC models that address the sourcing of ground transportation receipts should be revised.

The MTC currently has two model regulations that address the sourcing of ground transportation receipts:

1. Model Trucking Companies special industry rule. This model, adopted pursuant to section 18 of UDITPA, provides that a “trucking company” will source its receipts from hauling freight, mail, and express using a mileage approach (*i.e.*, it will apportion interstate revenue utilizing a ratio which compares in-state miles to total miles). The model was adopted by the MTC in 1986, at a time when UDITPA utilized the predominant cost of performance approach to source receipts from the sale of services.

The Trucking Companies rule defines trucking company to mean “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.”

2. Model General Allocation & Apportionment Regulations, Section 17. Reg. IV.17.(d) addresses the sourcing of receipts from the sales of services, including “product delivery services.” It sources receipts based on a taxpayer’s market; reg. IV.17(d)(1) states that 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].”¹

¹ The MTC, when drafting its general market-based sourcing regulations, made the decision to defer review of special industry regulations and noted in those regulations that: “In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion

The current version of Reg. IV.17 was adopted in 2017. This revision was necessary after the MTC revised Article IV of the Model Multistate Tax Compact (UDITPA) to use market-based sourcing principles to source the receipts from the sale of services and intangibles. See Compact, Art. IV, §17.

During the course of the work group’s deliberations, some participants have suggested that the MTC should revise the current model regulations to clearly source ground transportation receipts to the location where products are delivered, or by splitting those receipts between the locations where products are picked up and delivered—regardless of the type of transportation company providing the service. These participants have pointed to (among other things) the change to market sourcing, various gaps, ambiguities, and possible conflicts in the current MTC models.

Other participants have contended that the mileage approach set forth in the Trucking Companies special industry rule should be retained. They have noted (among other things) that mileage represents the market, that most states currently use the mileage approach with respect to trucking companies, that it is working well, and that the use of different sourcing approaches by different states could result in multiple taxation.

Earlier this year, the work group considered a motion directing MTC staff to draft for the work group’s consideration “a market-based alternative to source some or all trucking receipts based on pickups and/or deliveries.” The motion made clear that such language, if ultimately adopted, would serve as an optional alternative model “for states that choose to adopt that approach.” The motion was approved, with a small number of state participants voting.

MTC staff subsequently prepared draft language which has been revised on two occasions. The draft would alter the section 17 regulations to clearly provide for a deliveries approach to source “transportation and product delivery services.” The draft also addresses how to source the receipts of freight forwarders, logistics companies, and marketplace facilitators.

During work group meetings, only a handful of state participants have expressed their views. This has made it difficult at times to determine how to proceed. (Katie Frank, Chair of the work group, has stated at every meeting that when state participants of the work group speak they are not speaking officially for their state.)

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.”.

Key materials

The work group's [project page](#) contains background materials, staff memos, and written comments from the public. We encourage Uniformity Committee members to review these materials prior to the upcoming Committee meeting.

Here are direct links to some of the key materials:

- [Pros & Cons – Trucking Receipts Sourcing Methods](#) (April 20, 2023) Staff analysis
- [State Tax Treatment – Sourcing of Trucking Company Receipts \(Chart\)](#) – Staff research
- [MTC Staff Memo on Trucking Company/Transportation Services](#)
- [Current MTC Model Special Rules: Trucking Companies](#)
- Draft Rule for Sourcing Transportation Receipts – July 3, 2024 version ([PDF](#))([Word](#))

Next steps

The work group chair and MTC staff will update the Uniformity Committee on the work group's deliberations at the Committee's meeting on July 30. In addition, we plan to ask the Committee for feedback at that meeting on whether and/or how to proceed with finalizing possible revisions to the MTC's ground transportation models for eventual consideration by the Committee.

We conclude this memorandum by making two points. First, for any number of reasons, individual states may in the future decide to adopt a deliveries approach or alternatively to retain a mileage approach. That of course is their decision to make. This fact alone, however, should not prevent the MTC from revising its models if it concludes there are compelling reasons to do so. Second, the question of whether to revise the current MTC models is for the members of the the Uniformity Committee and ultimately the Commission to decide, not the MTC staff.