

# Why consider changes to the MTC model transportation sourcing rules?

During the course of the model sourcing regulations review project, work group members and MTC staff have identified various gaps, ambiguities, and possible conflicts in the current MTC models which address the sourcing of transportation receipts. They include the following:

# Issues

- Similar or identical transportation activities are treated differently depending on the type of transportation company providing the service. For example, receipts from transporting goods by truck are subject to different sourcing rules depending on whether the company falls under the definition of a “trucking company.”
- The current section 17 rules address *product delivery services* and arguably conflict with the Trucking Companies special industry rule. It is not clear from the text whether the section 17 rules, which are more recent, are intended to supersede the special industry rule and if so how.
- The applicability and operation of the Trucking Companies special industry rule can be unclear in combined filing states because the rule is based on the nature of the “company.”
- The method for sourcing product delivery services in the section 17 rules is arguably ambiguous or does not clearly specify when or how it applies in various situations.

# Issues, continued

- The rule for sourcing receipts of trucking companies was not examined when the MTC adopted market sourcing. And arguably the basis for adopting the special industry rule for trucking companies under Section 18 disappeared or at least required a redetermination when the MTC adopted market sourcing. Specifically, the mileage approach may have been adopted in 1986 because the predominant cost of performance approach could not reasonably be applied to ground transportation.
- Court decisions in two states arguably stand for the proposition that the mileage approach does not fairly represent business activities of certain transportation companies, particularly express carriers. We also are aware of disputes in some other states.
- Companies that sell tangible personal property and deliver that property to customers for a charge may be subject to multiple sourcing rules.

# Issues, continued

- The current models do not clearly explain how to source the receipts of freight forwarders and other logistics companies.
- The current section 17 rules, as they apply to transportation services, do not indicate how to address bundled services (*e.g.*, a marketplace facilitator that provides both delivery services and warehouse services).
- The model rule for sourcing transportation receipts of airlines is different than the rule for sourcing trucking companies and railroads.

# Issues, continued

- The current sourcing rules may enable some transportation companies to manipulate where receipts are sourced, especially where the rules would indicate that the receipts must be sourced to a business customer's location.
- The current models do not clearly address how to source receipts of certain product delivery companies when they subcontract to a third party such as a railroad or an airline.
- Since the special industry trucking rule was adopted almost 40 years ago, the transportation industry has changed in many significant ways.