

Multistate Apportionment in the Electronic Age Updating Article IV, §18

[Fair Representation of Business Activity]

Western States Association of Tax Administrators
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Uniform Division of Income for Tax Purposes Act

Section 18. If the allocation and apportionment provisions of this Act 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:

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

MTC Proposed Additions to Compact Article IV, §18 [based on UDITPA]:

1. Rules

Rules are specifically authorized to address “particular industries” or “particular transactions or activities”

2. Burden of Proof

- a) The Party requesting or requiring the alternative method (whether the Taxpayer or the Tax Administrator) has the burden of proving:
 - i. That the statutory formula does not fairly represent the business activity, and
 - ii. That the alternative is reasonable.
- b) The burden is the same for either Party
- c) The Tax administrator doesn't have the burden if the Taxpayer used an alternative method in any 2 of 5 prior years.

3. Penalties

No penalties may be imposed if a tax deficiency is “attributable to the Taxpayer’s reasonable reliance *solely* of the allocation and apportionment provisions of this Article”

4. Revocation

Written permission to use an alternative method may not be revoked retroactively unless there has been:

- a. A material change in the facts on which the Tax Administrator relied, or
- b. A material misrepresentation of those facts by the Taxpayer.

Questions?