

Multistate Tax Commission's Market-Based Sourcing Recommendations for Uniform Division of Income for Tax Purposes Act (UDITPA): Too Little, Too Late?

Article By:

Catherine A. Battin

Member states of the Multistate Tax Commission (MTC) voted to adopt [proposed amendments](#) to Article IV of the Multistate Tax Compact during their annual meeting in late July. The proposed amendments likely to have the most widespread impact on taxpayers are the amendments to the Uniform Division of Income for Tax Purposes Act (UDITPA) Article IV section 17 sourcing rules that change the sales factor sourcing methodology for services and intangibles from a costs of performance (COP) method to a market-based sourcing method.

The MTC's recommended market approach provides that sales of services and intangibles "are in [the] State if the taxpayer's market for the sales is in [the] state." In the case of services, a taxpayer's market for sales is in the state "if and to the extent the service is delivered to a location in the state." The proposed amendments also provide that if the state of delivery cannot be determined, taxpayers are permitted to use a reasonable approximation. At this point, there is no additional guidance from the MTC on the meaning of "delivered," how to determine the location of delivery in the event that a service is delivered to multiple jurisdictions, or what constitutes a reasonable approximation.

While the proposed amendments may be touted by some as the death knell of COP sourcing, for these changes to take effect, they will still need to be adopted individually by legislatures in Compact member states or in any other states that may choose to adopt them. As we have seen over the last several years, many states have already forged their own paths in this area. (See [our article](#) discussing the wide variety of market-based sourcing rules.) Moreover, while many states have enacted market-based sourcing provisions with respect to the sale of services, certain states, unlike the MTC proposed amendments, have declined to convert to market-based sourcing for intangibles (e.g., Pennsylvania).

The proposed amendments leave taxpayers with many unanswered questions. For example, assume a corporate taxpayer (Corporation A) is in the business of offering a payroll processing service. Corporation A provides this service to Corporation B. Corporation B's management of the contractual arrangement with Corporation A occurs in Massachusetts, which is also the location of Corporation B's human resources function. Corporation B has 10,000 employees, 2,000 of whom are located in a jurisdiction that has adopted the MTC's market-based sourcing recommendation

(State X). What portion of Corporation A's receipts from the performance of its payroll processing service for Corporation B should be sourced to State X?

One can reasonably argue that the service is delivered to Corporation B as a corporation (i.e., that the human resources function is the true beneficiary) and not individually to Corporation B's employees—leaving State X with nothing. However, does the MTC's language “if and to the extent the service is delivered” create an opportunity for State X to argue that it should receive 1/5 (2,000 employees/10,000 employees) of Corporation A's receipts?

In late August, the MTC launched a project to draft market-based sourcing regulations that are expected to answer some of these questions. Since Massachusetts adopted market-based sourcing language identical to the MTC amendments, there is some concern that the draft MTC regulations could bear a striking resemblance to the overly complex Massachusetts draft regulations. Under the Massachusetts draft regulations, Corporation A's receipts in the above-example, would likely be sourced entirely to Massachusetts under the provisions applicable to professional services.

It remains to be seen whether all current COP states will view the MTC's recommendations on market-based sourcing as a call to action. Since 19 states have already forged their own market-based sourcing paths, it seems likely that uniformity will be an impossible task to achieve—leaving taxpayers in a position of both uncertainty and opportunity.

© 2025 McDermott Will & Emery

National Law Review, Volume IV, Number 246

Source URL: <https://natlawreview.com/article/multistate-tax-commission-s-market-based-sourcing-recommendations-uniform-division-i>