1. 2014 STT 90-1 MTC REVIVES MOST OF POMP’S ALTERNATIVE APPORTIONMENT RECOMMENDATIONS. (Release Date: MAY 08, 2014) (Doc 2014-11471)

   Client/Matter: -None-
The Multistate Tax Commission Executive Committee on May 8 approved draft revisions to four areas of the Uniform Division of Income for Tax Purposes Act; though still working on alternative apportionment, the committee accepted in spirit three recommendations of hearing officer Richard Pomp.

"I think it’s interesting that the Executive Committee reviewed the hearing officer’s proposals on their own merits and by and large adopted the hearing officer’s recommendations,” MTC Executive Director Joe Huddleston said after the meeting.

The committee is still working on draft revisions to UDITPA section 18 on alternative apportionment, because members decided to incorporate -- either directly or in spirit -- most of University of Connecticut School of Law professor Richard Pomp’s hearing officer recommendations in this area.

The only section 18 proposal the committee rejected outright was Pomp’s recommendation that UDITPA’s language require a revenue department to publish its position on alternative apportionment as a regulation when that position has broad application. The Executive Committee decided that the MTC’s own draft language, which says the tax administrator “may” establish industry-wide rules or regulations, is what will eventually go to a survey of the states.

Pomp also recommended additions to section 18 that are not addressed in the MTC’s own draft amendments.
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The Multistate Tax Commission’s Executive Committee on May 8 voted to forward to a survey of the states the MTC’s draft amendments (Doc 2013-1916) to four areas of the Uniform Division of Income for Tax Purposes Act: the definition of sales, sales factor sourcing for services and intangibles, factor weighting, and the definition of business income.

The committee is still working on draft revisions to UDITPA section 18 on alternative apportionment, because members decided to incorporate -- either directly or in spirit -- most of University of Connecticut School of Law professor Richard Pomp’s hearing officer recommendations (Doc 2013-24961) in this area.

“I think it’s interesting that the Executive Committee reviewed the hearing officer’s proposals on their own merits and by and large adopted the hearing officer’s recommendations,” MTC Executive Director Joe Huddleston said after the meeting.

The only section 18 proposal the committee rejected outright was Pomp’s recommendation that UDITPA’s language require a revenue department to publish its position on alternative apportionment as a regulation when that position has broad application. The Executive Committee decided that the MTC’s own draft language, which says the tax administrator “may” establish industry-wide rules or regulations, is what will eventually go to a survey of the states.

Pomp also recommended additions to section 18 that are not addressed in the MTC’s own draft amendments.

º Pomp recommended that section 18 prohibit a tax administrator from retroactively revoking prior approval of a taxpayer’s alternative apportionment method, unless there has been a material change in or a material misrepresentation of the facts provided by the taxpayer. The MTC Executive Committee agreed that Pomp’s proposal is what will eventually go to a survey of the states.

º On burden of proof, the Executive Committee agreed in essence to Pomp’s recommendation that whichever party is seeking alternative apportionment bears
the burden of proof and that the burden should be the same for both the taxpayer and the tax administrator.

The committee sent the provision back to the Uniformity Committee for the addition of language reflecting that if a taxpayer is changing its long-standing filing method -- for example, from a market-based to a performance-based approach -- the taxpayer bears the burden of proof.

Pomp recommended that section 18 prohibit the imposition of penalties when a taxpayer files a return consistent with the statutory formula but the tax administrator later invokes an alternative method. By one vote the Executive Committee agreed to support Pomp’s recommendation but referred the language to the Uniformity Committee for adjustments that would make the prohibition more attributable to the issue as opposed to other types of penalties that might apply, like late penalties.

A survey of the states is the last step any proposal must pass before a final MTC vote for adoption. It’s possible that on July 31 at its annual meeting the MTC could adopt four sections of revisions to UDITPA that would shift the model to market-based sourcing, tweak the definition of business income by calling it apportionable income instead, and recommend that states adopt a double-weighted sales factor.

It’s unclear whether there is time for a revised section 18 to also be up for adoption this year.

"It’s conceivable that we could try to catch the section 18 provisions up, but we just haven’t had enough time to look at the calendar and figure out if that’s possible or not," Huddleston said.

The Uniformity Committee first needs to draft the requested changes. The Executive Committee would need to call at least one special meeting to approve the language and send the full section 18 revisions to a survey of the states in time for the annual meeting.

In separate action, the Executive Committee referred to a public hearing the MTC’s proposed amendments to the model financial institutions apportionment rule (Doc 2014-11510).

The following documents are available from Tax Analysts:

º Memo to the MTC Executive Committee summarizing where
Pomp’s recommendations diverge from the MTC’s (Doc 2014-11482).

* Chart comparing language where the MTC draft amendments and Pomp’s recommendations differ (Doc 2014-11475).

**References**

Subject Area:
- Apportionment;
- Corporate taxation;
- Financial institution tax issues;
- Multijurisdictional taxation