

349 East Multistate Tax Planning, LLC

David Uri Ben Carmel
6218 Georgia Avenue NW #506
Washington D.C. 20011-5125
daviduribencarmel@349east.com
www.349east.com
847/656-4823

March 16, 2023

BY EMAIL TO BHAMER@MTC.GOV

Brian Hamer
Counsel, Multistate Tax Commission
444 North Capitol Street NW, Suite 425
Washington, D.C. 20002

Re: Model Sourcing Regulations

Dear Mr. Hamer:

This letter is submitted in furtherance of my comments provided during today's meeting of the Multistate Tax Commission ("MTC") Model Sourcing Regulations Work Group ("Group"). The Group's mandate is to "to review [the MTC's] model receipts (sales) sourcing regulations for income apportionment purposes, including special industry regulations and more recently adopted market-based sourcing regulations." See the Group's cover page on the MTC's Internet site (accessed today).

Consistent with the Group's limited role of reviewing sourcing rules for "income apportionment purposes" (whether pertaining to the trucking industry, financial institutions, broadcasters, or any other business activity), all Group work products should clearly state that any recommended method of income sourcing has no relevance to the determination of a business's tax presence in a jurisdiction. That is, the analysis of tax presence – including via any variant of economic nexus – must be conducted independently of these income sourcing regulations.

Fortunately, language for this purpose already exists. Illinois income tax regulation 100.9720.a) concludes with the statement that "However, the fact that Article 3 of the IITA [Illinois Income Tax Act] requires a non-resident taxpayer to allocate or apportion income to this State does not create a presumption that the taxpayer has nexus."

For present purposes, that language could be revised to provide that:

"However, the fact that these sourcing rules require a taxpayer to allocate or apportion income to this State does not create a presumption that the taxpayer has nexus with the State."

Please feel free to contact me if you would like to discuss this further.

Sincerely,



David Uri Ben Carmel