taxnotes® state

Volume 120, Number 13 ■ June 29, 2026

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Reprinted from *Tax Notes State*, June 29, 2026, p.953

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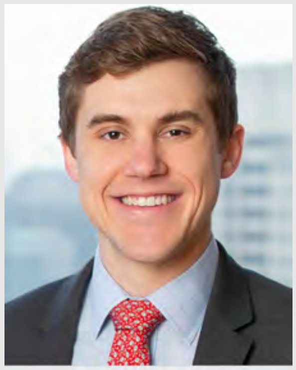

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In this installment of A Pinch of SALT, Borens and Gove analyze potential issues with recent proposals to update apportionment rules in special industries.

The use and relevance of special industry apportionment rules have attracted attention in recent years. Nearly every state has special industry apportionment rules, which are generally different from the standard apportionment formula, that it requires certain industries to apply. The special industry apportionment rules have become the subject of discussion in part because of the Multistate Tax Commission's project to update its special industry apportionment rules.[1]

This installment of A Pinch of SALT explores the history of special industry apportionment rules and recent proposals to update these rules.

UDITPA and Special Industry Apportionment Rules

State corporate income taxes are apportioned using various formulas. Because of the challenges associated with divvying up a multistate business's income among the states in which it does business, there has been a steady stream of changes to these apportionment formulas.[2] Having different state apportionment formulas increases the risk of overtaxation or undertaxation, which, in turn, poses the threat of federal legislation mandating a uniform apportionment formula. After many years of nonuniformity, ultimately the states adopted a nearly ubiquitous three-factor apportionment formula.

The traditional three-factor apportionment formula consists of the average of a property factor, a payroll factor, and a sales factor. It was included in a model law known as the Uniform Division of Income for Tax Purposes Act. UDITPA was promulgated by the Uniform Law Commission in 1957 and slowly adopted by nearly every state that imposed a corporate income tax.[3] That apportionment formula uniformity was significantly undermined when

[1] Amy Hamilton, "Trio of MTC Projects Build Momentum Toward April Milestones," *Tax Notes State*, Mar. 2, 2026, p. 724.

[2] *Underwood Typewriter Co. v. Chamberlain*, 254 U.S. 113 (1920); *Bass, Ratcliff & Gretton Ltd. v. State Tax Commission*, 266 U.S. 271 (1924); *Hans Rees' Sons Inc. v. North Carolina ex rel. Maxwell*, 283 U.S. 123 (1931).

[3] MTC, Article IV — UDITPA (last updated July 29, 2015).

the U.S. Supreme Court upheld Iowa's single-sales-factor deviation from the three-factor formula in *Moorman*.[4] The Supreme Court let stand Iowa's single sales factor, despite the Court recognizing that the single-sales-factor formula would undermine uniformity. However, the Court endorsed the three-factor formula as a "benchmark" five years after *Moorman*.[5] Nevertheless, *Moorman* was a dam-breaking moment leading to the creeping rise of apportionment formula chaos. Since *Moorman*, states have adopted different apportionment formulas and different methods to compute each factor of a given formula.

One area of near-uniformity remains: the recognition that any mandated apportionment formula may not fairly reflect a taxpayer's business activity. Following the drafting of UDITPA in 1957, the act was incorporated into the Multistate Tax Compact's Article IV, which became effective in 1967 upon seven states enacting the compact.[6] The compact's passage also created the MTC as the agency to administer the compact.

The drafters of UDITPA anticipated that an apportionment formula may not fairly apply to all taxpayers. UDITPA section 18 — referred to as a "safety valve," or alternative apportionment — allows a taxpayer or a state tax administrator to deviate from a standard apportionment formula to avoid unfairness.[7] Section 18 provides that if UDITPA's allocation and apportionment provisions "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 the employment of other apportionment methods.[8] While section 18 applies to individual taxpayers who do not fit within a generally applicable apportionment formula, states have also used section 18 to provide apportionment formulas applicable to entire industries. Section 18 allows a revenue authority to "establish appropriate rules or regulations for determining alternative allocation and apportionment methods" for "taxpayers engaged in a particular industry or in a particular transaction or activity."[9] This provision invites the creation of industry-applicable apportionment rules.

Historically, the MTC adopted model apportionment regulations applicable to (1) airlines, (2) construction contractors, (3) publishing, (4) railroads, (5) television and radio broadcasting, (6) trucking companies, (7) telecommunications and ancillary service providers, and (8) bank holding companies and subsidiaries. While the MTC is in the process of updating certain special industry rules, updating those rules is a lengthy, multistep process. It involves the MTC's Uniformity Committee approving the proposal, the Executive Committee considering the proposal, a public hearing on the proposal, the MTC surveying member states to determine if a majority would consider adopting the new rule, and then at least 60 percent of MTC members voting for the proposal, at which point the MTC recommends the new rule to the states.[10] Given the steps involved in this process and the number of steps remaining for those proposed special industry rules, we limit our analysis to the special industry rules now in effect (see table).

[4] *Moorman Manufacturing Co. v. Bair*, 437 U.S. 267 (1978).

[5] *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159, 170 (1983).

[6] Joe Huddleston and Shirley Sicilian, "The Project to Revise UDITPA," From the Proceedings of the New York University Institute on State and Local Taxation, at para. 1.02[1][a] (2009).

[7] UDITPA Art. IV, section 18.

[8] UDITPA Art. IV, section 18(a)(4).

[9] UDITPA Art. IV, section 18(b)(1).

[10] MTC, "Uniformity Process & Handbook" (Nov. 2024). For example, the proposed airline rule passed the Executive Committee and has now proceeded to member states being surveyed regarding whether they would adopt the new rule. Hamilton, "MTC Projects Snapshot: Airline Sourcing Rule Advances," *Tax Notes State*, May 4, 2026, p. 396.

MTC Special Industry Apportionment Rules

Special Industry	MTC Industry Apportionment Rule
Airlines	• *Property Factor*: Average cost per unit of aircraft ready for flight included in the numerator based on departures from locations in the state over the value of similarly weighted aircraft departing everywhere. • *Payroll Factor*: Compensation paid to flight personnel is included in the payroll factor numerator based on the cost and value ratio of aircraft departing from the state compared with total departures of similar aircraft departing everywhere. • *Sales Factor*: The numerator is determined using the ratio of aircraft departures in the state (using the cost and value of the aircraft by type, e.g., 747s, 727s) compared with departures of similar aircraft everywhere multiplied by transportation revenue.
Bank Holding Companies and Subsidiaries	• *Sales Factor*: Refers to the MTC's apportionment formula in the financial institutions' model statute, which includes receipts in the sales factor numerator based on sourcing rules for one of the 13 categories of receipts, and a catchall category, which sources receipts based on the state's default sourcing rules.
Construction Contractors	Construction contractors may use the percentage of completion method or the completed contract method of accounting for business income. • *Property Factor*: Follows UDITPA rule. • *Payroll Factor*: Follows UDITPA method, and compensation that is capitalized as part of construction is included in the payroll factor. • *Sales Factor*: Gross receipts are included in the numerator if the project is in the state, or if in multiple states, the gross receipts attributable to the state are based on the ratio of construction costs for the year to the entire project's costs during the year. If the taxpayer uses the percentage of completion method, the sales factor includes only that portion of the price that corresponds to the percentage of the entire contract completed during the year. For the completed contract method, the sales factor includes the receipts received or accrued during the year.
Publishing	• *Property Factor*: Property located in the state and outer-jurisdictional property used in the state, as determined by the ratio of outer-jurisdictional property employed in publishing in the state or transmitting data to or from the state over property used for transmissions everywhere. • *Payroll Factor*: Follows UDITPA method. • *Sales Factor*: The sales factor numerator includes tangible personal property sales (e.g., magazines) delivered in the state; advertising sales and the sale or rental of customer lists is sourced based on the publisher's "circulation factor" (i.e., the ratio of in-state subscribers of printed material over subscribers everywhere); and for targeted geographic advertising, the ratio of the subscribers in the state over the targeted subscribers is used.
Railroads	• *Property Factor*: Follows UDITPA method, but movable property is apportioned based on miles traveled within the state over miles traveled everywhere. • *Payroll Factor*: Follows UDITPA method, but the compensation paid to those performing services on interstate trains is based on their personal income tax liability in the state. • *Sales Factor*: Revenue from freight, mail, express, and passenger transportation is in the state if the shipment/trip originates and terminates in the state. Receipts from freight, mail, and express shipments that travel through the state are apportioned to the state based on the ratio of miles traveled in the state to total miles traveled for that shipment from origin to destination. Revenue from passengers is the ratio of passenger miles in the state to total passenger miles everywhere.

MTC Special Industry Apportionment Rules *(Continued)*

Special Industry	MTC Industry Apportionment Rule
Television and Radio Broadcasting	• *Property Factor*: Follows UDITPA method, excluding outer-jurisdictional property. • *Payroll Factor*: Follows UDITPA method. • *Sales Factor*: Gross receipts from unaffiliated television or radio advertising or programming are included in the sales factor numerator based on the audience factor (ratio of the station's audience in the state to the station's total audience). Receipts from a cable television system are included in the sales factor numerator based on the audience factor (ratio of in-state viewers over total viewers). Also included are gross receipts from advertising or programming on affiliated television or radio stations in the state.
Trucking Companies	• *Property Factor*: Mobile property is included in the property factor numerator based on the property's miles in the state over the total mobile property miles. • *Payroll Factor*: Payroll for individuals performing services both within and without the state is included in the numerator based on the mobile property miles in the state. • *Sales Factor*: All receipts from intrastate shipments are included in the sales factor numerator. Receipts from interstate shipments are determined based on the portion of mileage traveled in the state over the shipment's miles traveled from origin to destination.
Telecommunications and Ancillary Service Providers	• *Property Factor*: Follows UDITPA rules. • *Payroll Factor*: Follows UDITPA rules. • *Sales Factor*: Unless specifically defined, services sold on a call-by-call basis are included in the numerator if the call originates and terminates in the state or the call originates or terminates in the state and the service address is in the state. The rule also identifies specific other types of receipts included in the numerator, which include: (1) mobile telecom receipts if the customer's primary place of use is in the state; (2) prepaid calling and wireless services when the origination point is in the state; (3) ancillary services if the customer's primary place of business is in the state; (4) receipts from resale to other telecom providers based on the buyer's Federal Communications Commission-reported total carrier service revenue for the state over its total carrier service revenue for all states; and (5) bundled receipts are sourced based on the rules applicable to the constituent parts of the bundle, with the gross receipts for the bundled components being equal to the price charged when the service is sold separately.

Many states have adopted the MTC's special apportionment rules. For example, Alabama incorporated all the MTC special apportionment rules, other than those for bank holding companies.[11] Similarly, Montana's regulations provide special industry apportionment rules for railroads, trucking, airlines, construction contracts, publishing companies, television and radio broadcasters, telecommunication services, and financial institutions, all of which largely incorporate the MTC special industry rules.[12]

In addition to the special industry rules provided by the MTC, some states have adopted their own special apportionment provisions for industries outside the eight categories addressed by the MTC. For example, Alaska apportions income to the state from oil and gas producers using a two-factor property and extraction formula.[13] And New York provides specific apportionment provisions for the receipts "of a registered securities broker or dealer from securities or commodities broker or dealer activities."[14]

MTC Updates to UDITPA

A related MTC apportionment development affects its special industry apportionment rules. In 2015 the MTC revised its general sourcing provisions by amending its adoption of UDITPA section 17. The section, applicable to sales factor receipts from services and intangibles, applied a

[11] *See* Ala. Admin. Code r. 810-27-1-.18.01 through 810-27-1-.18.07.

[12] *See* Mont. Admin. R. 42.26.601 through 42.26.1303.

[13] Alaska Stat. section 43.20.144(c)(2).

[14] N.Y. Tax Law section 210-A.5(b).

costs of performance method. Costs of performance depended on the location of a taxpayer's activities. The MTC scrapped the costs of performance method in favor of a market-based sourcing method that looks to the locations of a taxpayer's customers. While UDITPA had been in place for almost 60 years at that point, the transition to market-based sourcing was not unexpected, as many states had already adopted a market-based sourcing method.[15]

Under the revised, market-based UDITPA provisions, receipts "are in this State if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state . . . in the case of sale of a service, if and to the extent the service is delivered to a location in this state."[16] Similarly, the sourcing of receipts from sales of intangibles was revised to be "in this state" if the intangible property is rented, leased, or licensed, "provided that intangible property is utilized in marketing a good or service to a consumer . . . if that good or service is purchased by a consumer who is in this state."[17]

When the MTC updated UDITPA in 2015, it did not contemporaneously revise its special industry apportionment model regulations, even though some of the special industry regulations date back to the 1980s. For example, the construction contractor's rule was adopted in 1980, the rule for railroads in 1981, and the airlines rule in 1983. These regulations already provided a market-based sourcing approach, therefore there was no immediate need to revise them.

For example, as identified above, the special regulation regarding television and radio broadcasters requires that the sales factor numerator include the taxpayer's gross receipts from television or radio programming using an audience factor.[18] The "audience factor" is the ratio of the "taxpayer's in-state viewing (listening) audience to its total viewing (listening) audience."[19] Thus, the audience factor is intended to reflect the television and radio programming taxpayer's customer market. As shown above, the same is true for most of the special industry sourcing rules.

MTC Efforts to Update and Enact New Special Industry Rules

Recently, the MTC undertook a project to review and potentially update its special industry apportionment rules in light of its 2015 amendments to UDITPA. As part of this project, the MTC first focused on the special sourcing rules for trucking companies. Under the current rule, a "'trucking company' is defined as a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation."[20] Under the rule, trucking company revenue from interstate shipments via freight, mail, and express is apportioned based on the ratio of interstate miles traveled to the total miles traveled from origin to destination.[21]

The MTC's updated proposal to the trucking rules would have made at least two changes. It would have modified the single sourcing method to two sourcing methods: (1) retaining the historical mileage sourcing of interstate miles to total miles; and (2) adding a volume-based rule using the package pickup and drop-off locations. The volume-based rule was then transitioned to a drop-off-only location rule. In addition to trucking companies, the rule would cover marketplace providers and logistics companies, which, according to the MTC, was done to cover additional service providers that interact with the trucking industry.

The proposed changes were met with opposition from taxpayers and some states, and ultimately, the MTC's Uniformity Committee voted to stop work on the trucking apportionment project — leaving the long-standing mileage rule in place. This "truck-stop" failure of the proposal to update the special industry regulation may have stemmed from the desire to include an "either/or" apportionment rule.

[15] See, e.g., Illinois adopting market-based sourcing for services "received in this State" beginning for tax years ending on or after December 31, 2008. 35 Ill. Comp. Stat. 5/304(a)(3)(C-5)(iv).

[16] UDITPA section 17(a)(3).

[17] UTIDPA section 17(a)(4)(i).

[18] Multistate Tax Compact Reg. IV.18(h)(4)(iv)(B)(2).

[19] *Id.*

[20] Multistate Tax Compact Reg. IV.18(g)(1).

[21] Multistate Tax Compact Reg. IV.18(g)(3)(iv)(B).

Notably, the MTC has advanced the proposed changes to its airline industry apportionment rules. The proposed changes address modern streams of income, such as receipts from the sale of "points" or "miles."[22] This rule regarding points and miles also applies to "any taxpayer that is related to an airline."[23] Under the new proposal, the airline receipts factor numerator (renamed from the "sales" factor) includes transportation revenue in the state, which is determined using the taxpayer's departure ratio (aircraft departures in the state by weighted value over the departures of the same weighted value aircraft everywhere).[24] Finally, under the proposed regulation, if a taxpayer and an airline are related parties, but the taxpayer is not an airline, the taxpayer sources receipts from the sale of points or miles "that may be redeemed by the purchaser or by a third party for air travel by applying the departures ratio applicable to the related airline."[25]

No Longer Needed or Needed More Than Ever?

The failure of the trucking company regulation highlights the potential opportunities and problems created by special industry apportionment regulations. As was found with the trucking company regulation, these special industry rules generally face two challenges: (1) who they should apply to, and (2) whether the states can agree on a single alternative rule.

Applying special industry rules too broadly minimizes their effectiveness. For example, the mileage-based trucking company rule works well for traditional trucking companies — but not every taxpayer that delivers goods is a trucking company that should be subject to mileage-based apportionment.

Conclusion

The special industry rules are at a crossroads. These rules have largely worked well as a means of sourcing receipts based on the special industries' markets. However, because many businesses (and their affiliates) often do not engage in only one business, it is challenging to determine the scope of a "special" industry. And given the tension between states' apportionment goals, states are less likely to uniformly apply any apportionment rule or method. ■

[22] Proposed Revisions to the MTC Special Industry Regulation on Airlines: Submitted by the Model Receipts Sourcing Regulation Work Group (Nov. 18, 2025).

[23] Multistate Tax Compact Reg. IV.18(e), Drafter's Note.

[24] Multistate Tax Compact Reg. IV.18(e)(2)(iv)(B).

[25] Multistate Tax Compact Reg. IV.18(e)(2)(iv)(C).