

# LEGAL SERVICES

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## MEMORANDUM

April 4, 2018

**SUBJECT:** Allocation and Apportionment  
(CSHB 398(FIN); Work Order No. 30-LS1231\J)

**TO:** Representative Neal Foster  
Attn: Brodie Anderson

**FROM:** Emily Nauman   
Legislative Counsel

Please find the abovementioned bill attached. You asked that I include a legal memo discussing the need for the addition of the word "apportion" in the phrase "allocate and apportion" found at page 1, line 7 of the bill.

As you are no doubt aware, the Multistate Tax Compact (AS 43.49) (MTC) provides a formulaic method for dividing income between states for purposes of state income taxes. For purposes of the MTC, there are two classes of income: business income, which is *apportionable*, and nonbusiness income,<sup>1</sup> which is *allocable*. In other words, income that will be divided up among states is said to be *apportioned*, while income that is categorized to one state, and not divided, is said to be *allocated*.<sup>2</sup> Therefore, it is most accurate to describe income of a multistate entity as both *allocable* and *apportionable*. Note that this is also consistent with the use of both terms in the remainder of the Multistate Tax Compact (AS 43.19).

If I may be of further assistance, please advise.

ELN:mlp  
18-226.mlp

Attachment

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<sup>1</sup> An example of nonbusiness income, for purposes of the MTC, might be investment income.

<sup>2</sup> The Due Process and Commerce Clauses of the United States Constitution require that there be a minimum connection between a state and the income it is taxing. The unitary business principle permits a state to tax a corporation on an apportionable share of the multistate business conducted in the taxing state. *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768 (1992).