



# MOTION PICTURE ASSOCIATION

## **Market Based Sourcing for Taxation of National Broadcasters' Income Amendment to House Bill 280**

### **Background**

States across the country are revising their tax codes to require multistate corporate taxpayers to apportion sales of services and sale or license (hereinafter 'sale') of intangible property using a market-based (meaning, where is the customer located) apportionment method. Under a market-based approach, sales of services and intangible property are assigned to the state in which the services are delivered to the customer, where the customer receives the benefit of the services or where the customer is located and where the intangible property is used.

### **Policy Objective using the Sales Factor**

The goal of the sales factor is to assign the receipts of a taxpayer, for the purpose of apportioning the taxpayer's income, based on the location of its customers, which represents its market. The sales factor should rely on information that is directly knowable by the taxpayer and that can be verified by a tax administrator.

### **Customers (Market) of Broadcast TV/Cable Networks**

The Motion Picture Association\* (MPA) member companies own national broadcast and cable networks subsidiaries, as well as TV distribution companies. Broadcasters and cable networks have three different types of customers and sources of revenue.

- **Advertising Customers** – Entities that purchase commercial advertising space on broadcast or cable networks.
- **Program Distributors/Licensing Customers** – Third-party distributors that license creative content from broadcasters, such as TV shows and movies.
- **Direct to Consumer** - Individual consumers who purchase subscriptions directly from streaming services. With technical advancements in distribution models the direct to consumer, i.e., 'retail' license of broadcaster content to individuals has rapidly outpaced the traditional 'wholesale' model of distribution to 3<sup>rd</sup> parties such as stations and cable operators.

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\* The MPA's members are: Amazon Studios, LLC, Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

Broadcasters have direct, contractual relationships with their customers and receive payments for services, such as broadcasting commercials or providing content to subscribers of streaming services, or license/sale of intangibles, such as retransmission fees. There are clear, well-established methods of assigning sales based on where a broadcaster's actual customers are located.

#### **Customer Location Has Been Adopted in Many States.**

States that have adopted the broadcaster customer location method of apportionment include Idaho, Missouri, Rhode Island, Tennessee, Iowa, Illinois, Michigan, Louisiana, North Carolina, Kentucky, Florida, Texas, West Virginia, and Wisconsin. The majority of states adopting customers' commercial domicile apportionment did so as part of the transition to a market-based sourcing approach. Each state adopted this method as a basis for establishing certainty, accuracy and a fair measure of broadcaster apportionment that will not be outdated with continued advances in technology.

#### **Apportionment Based on Audience is Outdated.**

Broadcasting has substantially transformed since the "audience" sales apportionment method was proposed by the Multistate Tax Commission in the 1990's as a proxy for a broadcaster's market. The "audience" apportionment method does not capture a traditional broadcaster's actual customers. Viewers are the customers of a broadcaster's customers, e.g., cable operators and satellite distributors with whom broadcasters generate direct sales from the privity of contract between seller and customer. As a result, the "audience" method has critical deficiencies as a market approach to apportioning income, forcing the taxpayer broadcaster into making general estimates on audience share in an attempt to comply with the 'audience' apportionment rule.

#### **Recommendation for Market Sourcing as Applied to Broadcasters**

The MPA respectfully recommends that if Alaska policy makers enact a market sourcing statute as proposed in House Bill 280 (HB 280), then the broadcasters' market should be based on the location of its customers, as determined by the customer's commercial domicile. Moreover, the location of customer approach adopted by the 14 states referenced above and proposed herein for Alaska will accurately report sourcing revenues direct from consumer licensees which, as previously stated is the revenue stream rapidly displacing the traditional broadcaster model. Rather than audit and legal disputes over the deeply flawed 'audience' approach This method is technically accurate, efficient to administer, simple to audit, and already defined in the Alaska income tax code.

**Proposed Broadcaster Market Sourcing Language for Consideration** (at page 9, line 28 of HB 280): Receipts from a broadcaster's sale of advertising services or licensing fees for the right to use film programming to a broadcast customer are assigned to Alaska if the commercial domicile of the broadcast customer is in Alaska. For purposes of this provision, "advertising services" means an agreement to include the broadcast customer's advertising content in the broadcaster's film programming." In the case of business customers, the broadcast customer's location shall be determined using the broadcast customer's commercial domicile. In the case of



individual customers, the broadcast customer's location shall be determined using the address of the broadcast customer listed in the broadcaster's records.