



COMMONWEALTH of VIRGINIA

Department of Taxation

November 15, 2025

The Honorable L. Louise Lucas
Chair, Senate Finance and Appropriations Committee

The Honorable Luke E. Torian
Chair, House Appropriations Committee

The Honorable Vivian E. Watts
Chair, House Finance Committee

Dear Chairs Lucas, Torian, and Watts,

During the 2025 Session, the General Assembly enacted its 2025 Appropriation Act (House Bill 1600, Chapter 725), Item 257(E) of which requires Virginia Tax to convene a workgroup assess implementation of market-based sourcing ("MBS") in Virginia. The report of the study is enclosed.

If you have any questions or comments regarding the study or the enclosed report, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Alex", written over a horizontal line.

James J. Alex
State Tax Commissioner
Commonwealth of Virginia

C: The Honorable Stephen E. Cummings, Secretary of Finance
Kristin Collins, Deputy Tax Commissioner

Study Regarding Adopting Market-based Sourcing in Virginia

Final Report

Department of Taxation

November 15, 2025

Table of Contents

	Page
Executive Summary	3
Background.....	3
Costs-of-Performance (“COP”) Sourcing Method	4
Market-based Sourcing (“MBS”) Sourcing Method	4
Multistate Tax Commission (“MTC”) Model MBS Rules	4
Virginia’s Method of Apportionment	5
Sales Factor.....	5
<i>Look-through Rules.....</i>	<i>5</i>
<i>Throw-out Rules</i>	<i>6</i>
Workgroup Meeting	6
August 6, 2025 Meeting.....	6
Workgroup Discussion	7
Written Comments.....	8
Conclusions and Recommendations	10
Administrative Feasibility	10
Impact on Major Classifications of Corporations Operating in Virginia.....	10
<i>Telecommunication Carve-Out Language</i>	<i>10</i>
<i>Alternate Reasonable Apportionment Language for Defense Contractors</i>	<i>11</i>
<i>Other Taxpayers</i>	<i>12</i>
Impact on Corporate Expansion Within and Into Virginia.....	12
Projected Impact on Economic Development.....	13
Projected Impact on Virginia Tax Revenue.....	13
Recommendations	14
Appendix A: Item 257(E), HB 1600	16
Appendix B: Written Comments.....	19
Appendix C: Workgroup’s Recommendation Draft Legislation	45
Appendix D: Workgroup Documents.....	57
Appendix E: MTC Section 17.....	89
Appendix F: The SFAC Staff Requests	116
Appendix G: VEDP MBS Estimates.....	118

Executive Summary

During the 2025 General Assembly Session, the Executive Budget (House Bill 1600 and Senate Bill 800) and two bills (House Bill 1866 and Senate Bill 1456) were introduced that would have adopted market-based sourcing (“MBS”) in Virginia. While these measures were not adopted, Item 257(E) of the 2025 Appropriation Act (House Bill 1600, Chapter 725) established a workgroup to assess MBS with the Secretary of Finance and the Chairs of the House Finance, House Appropriations, and Senate Finance and Appropriations Committees participating in selecting the workgroup’s members (See Appendix A, Item 257(E), HB 1600).

The workgroup was required to assess implementing MBS, including:

- The administrative feasibility,
- The impact on major classifications of corporations operating in Virginia,
- The impact on corporate expansion within and into Virginia, and
- The projected impact on Virginia tax revenue as a result of adopting MBS.

The stakeholder meeting of the workgroup was held on August 6, 2025. Following the meeting, the Department of Taxation (“the Department”) solicited additional comments to be provided by August 20, 2025. All written comments received from the workgroup are attached (See Appendix B, Written Comments). The workgroup found that adopting generally applicable MBS rules similar to the Multistate Tax Commission’s (“MTC’s”) model rules would have an overall positive impact on economic development in Virginia. Two industries, the defense industry and the telecommunications industry, expressed concern over how MBS could impact them. The workgroup produced draft recommended legislation for the adoption of MBS, which includes two optional provisions to address these industry specific concerns. Some workgroup participants expressed concern over the MTC’s “throw-out” rules, and optional language has been included to replace the MTC’s “throw-out” rules.

After the circulation of the draft report and after the receipt of any comments, the Department will report the workgroup’s recommendations to the Joint Subcommittee on Tax Policy for evaluation of the fiscal implications and incorporate the feedback from the Joint Subcommittee in the final report.

Background

Apportionment is the method by which states divide a multistate taxpayer’s income for corporate state income tax purposes. The starting point for corporations filing a state income tax return in Virginia and many other states is federal taxable income. The

National Conference of Commissioners on Uniform State Laws created the Uniform Division of Income for Tax Purposes Act (“UDITPA”) in 1957 to assist states in taxing multistate corporations. Under UDITPA as enacted in 1957, states generally apportioned their income by the application of a three-factor formula: the property factor, the payroll factor, and the sales factor. Under current law, Virginia double weights the sales factor, meaning that the Virginia formula consists of the property factor plus the payroll factor plus twice the sales factor, divided by four.¹

Costs-of-Performance (“COP”) Sourcing Method

Under the original version of UDITPA, states sourced sales of services and intangibles (i.e., non-tangible sales) to a state based on where the income producing activity was performed. For multistate corporations, sales were sourced to a state if the greater proportion of the income-producing activity was performed in the state than in any other state (i.e., the “costs-of-performance” or “COP”).

Market-based Sourcing (“MBS”) Sourcing Method

States began shifting away from COP to adopt what is known as market-based sourcing or MBS for non-tangible sales. These rules are conceptually similar to the destination sourcing rules states already used for tangible sales, in that the goal is to source nontangible sales to the state where the taxpayer’s market is. Because the model rules under UDITPA still reflected the COP sourcing methodology, states that began to adopt MBS did so slowly at first, and as late as 2010, there were only 12 MBS states. By 2015, the number of states adopting MBS had almost doubled to 23 states. By 2020, the number of states adopting MBS had again increased significantly to a total of 37. As of 2025, there are 41 MBS states and only 7 COP states, making the once nearly universally accepted COP method now the outlier.

Multistate Tax Commission (“MTC”) Model MBS Rules

With the increasing popularity of MBS, the MTC began a uniformity project to redraft the sourcing rules for services and intangibles set forth under UDITPA. This project began in July 2009, and MBS rules were formally adopted in July 2015. Subsequently, the MTC began a workgroup to adopt model regulations providing the more detailed rules for how to implement MBS in a manner consistent with other states. This project began in 2016,

¹ Corporations that apportion income are generally required to use a three-factor formula of property, payroll, and double weighted sales. The sum of the property factor, payroll factor, and twice the sales factor is divided by four to arrive at the final apportionment factor.

$$\text{Apportionment Factor} = \frac{\text{Property Factor} + \text{Payroll Factor} + 2 \times \text{Sales Factor}}{4}$$

and model MBS regulations were adopted in 2018. The MTC model has been the basis for the MBS laws and regulations adopted in the states enacting MBS over the last ten years.

Virginia's Method of Apportionment

Adopting MBS would not change Virginia's three factor apportionment formula (property, payroll, and sales double weighted), nor would it change anything about the property or payroll factors. There would also be no change in how sales of tangible property are assigned, as MBS would only address how the sales factor for non-tangible sales is computed.

Sales Factor

A taxpayer's sales factor is calculated by taking the amount of the taxpayer's sales in the state (the numerator) divided by the amount of the taxpayer's sales everywhere (the denominator). Due to the complexity and diversity of the potential products, services, and contractual relationships that may be represented in a taxpayer's sales factor, many states have implemented special rules such as the "look-through" rule and the "throw-out" rule.

Look-through Rules

Under MBS, taxpayers are required to reflect the market for their sales as accurately as possible but, in certain circumstances, it may be difficult for taxpayers to determine if the market for a sale is the taxpayer's direct customer's location or the location of the actual user or recipient of the intangible or service being provided. "Look-through" rules are designed to help taxpayers determine when taxpayers should "look-through" their immediate customer to the end user or recipient to determine the taxpayer's market for a sale. In this way, look-through rules attempt to balance the need for accuracy with practicality.

However, look-through rules cannot anticipate every possible scenario and, as a result, there may be situations where there is uncertainty regarding when and to what extent taxpayers are required to look-through to determine their market. To further complicate the matter, taxpayers may lack the information necessary to determine the end user or recipient, or it may be impractical to obtain or gather such information. As a result, look-through rules have been criticized for creating too much uncertainty for taxpayers and too many disputes with state tax departments over when and to what extent look-through rules should be applied.

Throw-out Rules

Many states and the MTC model have implemented “throw-out” rules for sales that are either untaxed in any state or for which a taxpayer lacks sufficient information to assign to a state or states. These rules exclude or “throw-out” such sales from the denominator of the taxpayer’s sales factor to prevent the inclusion of “nowhere” sales that artificially underrepresent the taxpayer’s sales factor in the state. If applied uniformly by the taxpayer and states, throw-out rules eliminate “nowhere” sales while not requiring taxpayers to be subject to tax on more than 100% of their sales.

However, throw-out rules have been criticized as potentially causing a misrepresentation of a taxpayer’s market. It has been argued that excluding a significant amount of sales from the denominator of a taxpayer’s sales factor increases the taxpayer’s sales factor in a state and distorts the taxpayer’s actual market in that state.

In the past, Virginia has declined to adopt similar “throwback”² rules for sales of tangible personal property. Optional alternate language has been included replacing the MTC “throw-out” rules with a rule that would assign sales for which there is insufficient information to ascertain the market to Virginia based on Virginia’s population as compared to the entire population of the relevant market (See Appendix C, Workgroup’s Recommended Draft Legislation).

Workgroup Meeting

The Department, in collaboration with the Virginia Economic Development Partnership (“VEDP”), contacted relevant stakeholder representatives to notify them of the MBS workgroup meeting.

August 6, 2025 Meeting

The workgroup meeting was held on August 6, 2024. Stakeholder representatives that responded to the request for participation were in attendance, either in person or virtually. Prior to the meeting, the Department gave the stakeholders an agenda with an outline of the topics to be discussed, the MTC model MBS regulations, and the PowerPoint presentation (See Appendix D, Workgroup Documents & Appendix E, MTC Section 17).

After introductions, the State Tax Commissioner gave opening remarks and thanked attendees and representatives from the Department and VEDP for their participation in

² Throwback rules require sales of tangible property which are untaxable in the state to which they are delivered to be “thrown back” or included in the sales factor of the state from which the tangible personal property was sold.

the workgroup. Then, VEDP gave their opening remarks and business insights. The Department then provided an overview of the purpose and legislative mandate of the workgroup, prior Virginia legislation and studies on MBS, and adoption of MBS by other states. (See Appendix D, Workgroup Documents). The Department provided the workgroup participants with printed copies of the MTC model regulations as a starting point for the workgroup's discussion (See Appendix E, MTC Section 17).

Workgroup Discussion

A representative for the Virginia Society of Certified Public Accountants ("VSCPA"), Kris Thomas, commented on the need for implementing a new economic nexus-based filing threshold as part of the MBS workgroup.

Attendees pointed out that, under MBS, taxpayers who cannot determine the market for a sale are required to reasonably approximate their market, and often taxpayers and state tax departments could disagree over what would be reasonable in a given situation. After a discussion regarding different approaches to reasonable approximation, a VSCPA representative mentioned that, as a tax preparer, he would prefer that a hierarchy of specific reasonable approximation methods be set out in guidance documents to eliminate potential disagreements over whether a given approach is reasonable. California was mentioned as a state that gave more specific guidance using a one size fits all approach, while the MTC provided a more general approach that could be tailored to each taxpayer's specific circumstances.

Next, the workgroup turned to the question of whether MBS would be a benefit to companies expanding their current operations in Virginia. A representative with ICF International, Inc., a government contractor firm, stated that their payroll factor in Northern Virginia is heavy in comparison to other jurisdictions. The representative further stated that MBS would be a relief because their firm is punished by having a large payroll base in Virginia. He further mentioned, because of Virginia's COP method, his company often faces double taxation. However, his company appreciates Virginia's low corporate tax rate and has benefited from the Major Business Facilities Job Tax Credit.

Telecommunications company representatives commented that MBS increased such companies' tax liabilities in several states and that they would prefer to remain under the current COP rules. They stated that, due to the unique infrastructure demands in the telecommunications industry, the property and payroll factors more fairly represent the company's market than MBS would. They further pointed out that telecommunications companies have been asked to make great investments in underserved areas of Virginia and that several states that recently adopted MBS have made some allowances for the telecommunications companies. Arkansas and Kansas were specifically mentioned.

After that, the workgroup turned to the three statutory exceptions that currently allow MBS for debt buyers, property analytics firms, and internet root infrastructure providers. The workgroup explored how to handle these three exceptions going forward. A company representative for Verisign, an internet root infrastructure provider, affirmed their commitments to the Commonwealth and stated they will stand by those commitments regardless of whether his industry is included in a broader MBS bill or left as a standalone exception. Another representative from Verisign seconded this sentiment by saying that they are keeping up with their current MOU requirements with no intention of doing anything different.

Other issues discussed by the workgroup included how Virginia would approach rules regarding look-throughs and throw-outs. As described above, look-through rules refer to a requirement in some states that, in a transaction in which the taxpayer's customer is not the end user of the service or intangible good, the taxpayer generally must look through to the end user to determine the market. Attendees, including representatives from Northrop Grumman and Booz Allen Hamilton, mentioned that this can be very difficult or impossible in many cases, and they requested that, if look-through rules were adopted, that they be as specific as possible. The Department asked if there are examples of states that handled this issue well, and New York was identified as a possibility.

Throw-out rules, discussed above, are rules for sales that are "thrown-out" from the sales factor if they are either not taxed in any state or a taxpayer lacks sufficient information to assign the sale to a state or states. A representative from the VSCPA suggested that throw-out rules could be used in a punitive manner and, if a sale were to be excluded from total sales when computing the sales factor, it should also be excluded from income prior to apportionment. Other participants, including another representative from the VSCPA and a representative from Northrop Grumman, agreed with the concern that throw-out rules could be applied in a punitive manner.

Written Comments

The Senate Finance and Appropriations Committee ("SFAC") staff requested that the final report address possible implementation costs, the current MBS statutory exceptions, sector-specific carve-outs, and the revenue impact of MBS, including the impact of sector-specific carve-outs. SFAC staff also requested that the Joint Legislative Audit and Review Commission ("JLARC") be consulted regarding revenue estimates, projected economic development and sector-specific carve-outs (See Appendix F, SFAC Comment).

The Department received several comments from private sector participants after the workgroup meeting, but prior to circulating the draft report (See Appendix B, Written

Comments). The VSCPA requested that the Department provide further guidance on the interaction between MBS, economic nexus, and the corporate income tax filing requirements. This comment has been addressed by adding an economic nexus threshold to the workgroup's recommended draft legislation. (See Appendix C, Workgroup's Recommended Draft Legislation).

Nodal, a derivatives exchange and clearing house, commented that Virginia adopting MBS would be beneficial to its business and other similarly situated companies. Nodal noted that adopting MBS would facilitate its continued investment and growth in Virginia, while Virginia's current COP method has been a significant burden due to the resulting double-taxation at the state level.

Two defense contractors, Northrop Grumman, and Booz Allen Hamilton, did not object to Virginia adopting MBS, but commented that, due to the unique nature of federal government contracts, the standard MTC approach to reasonable approximation may not accurately reflect the market for their industry. Further, due to the unique nature of the national defense industry, these companies may not be able to determine or disclose their market for many sales. They explained how this can lead to controversy over whether a method of approximating the market for sales is "reasonable." They both expressed their preference for a defense contractor-specific approach to reasonable approximation. Northrop Grumman specifically referred to California as a model using a population approach to reasonable approximation, while Booz Allen Hamilton offered a number of different potential alternatives including location of labor hours, population, or agency/branch specific data.

Both CTIA, the trade association for the wireless communications industry, and the Broadband Association of Virginia made comments encouraging a sector-specific carve-out for telecommunications companies to continue to use COP instead of MBS and cited several other states that made special provisions for telecommunications companies when adopting MBS. Both of these comments stated that, due to the unique nature of the telecommunications industry, they believe that COP better represents where a telecommunications company's income is earned and that adopting MBS in Virginia without a carve-out would increase the tax burden for telecommunications companies operating in Virginia.

After reviewing the draft report CTIA, the Broadband Association of Virginia, Booz Allen Hamilton, and JLARC made additional written comments (See Appendix B, Written Comments). JLARC provided a written comment after their review of VEDP's economic development estimates and the Department's revenue estimates. JLARC found both estimates to be reasonable and consistent with peer-reviewed research. The remaining

additional written comments have been addressed in greater detail below in the “Impact on Major Classifications of Corporations Operating in Virginia” section of the report.

Conclusions and Recommendations

Administrative Feasibility

The cost of implementation of MBS in Virginia could be absorbed as part of the Department’s annual updates to forms and instructions without additional administrative expense.

Impact on Major Classifications of Corporations Operating in Virginia

Overall, the workgroup found that MBS would benefit most service companies operating in Virginia. Only two sectors had concerns regarding MBS:

- While not objecting to MBS, two members of the defense industry were concerned that the application of the standard MTC rules regarding reasonable approximation would not fairly represent their market and suggested an alternative measure of reasonable approximation for their industry.
- Representatives from the telecommunications industry believed that MBS would increase the tax burden on their industry and preferred a sector-specific carve-out to allow telecommunications companies to continue to use COP.

To address both of these concerns, optional telecommunications carve-out language and alternate reasonable apportionment language for defense contractors have been added to the workgroup’s recommended MBS legislative text for the General Assembly’s consideration (See Appendix C, Workgroup’s Recommended Draft Legislation).

Telecommunication Carve-Out Language

Optional telecommunications carve-out language is included in the Workgroup’s Recommended Draft Legislation. After circulating the draft report, both CTIA and the Broadband Association of Virginia provided additional written comments indicating that they preferred a broader, more widely applicable carve-out. This would ensure that not just telecommunications companies but all companies in the communications industries, such as internet access services and video programming services, would qualify for the carve out. They both also preferred that the carve-out be made permanent and not include a sunset provision (See Appendix B, Written Comments).

CTIA specifically requested language to allow deferred tax liability adjustments over an extended period of time if the sunset is kept. CTIA further requested that consolidated filers be allowed to use COP for the entire consolidated group and not just those members of the group that met the carve-out definition. The Broadband Association of Virginia also advocated for consistency in the election methodology used in choosing between COP and MBS that would simplify the process for the Department and eligible taxpayers.

The Department's revenue estimates for a telecommunications carve-out provision do not include the suggested changes in the written comments. The Department's estimates for the carve-out provision were developed by using several means to select potentially impacted taxpayer accounts, including taxpayers who are subject to the telecommunications minimum tax and self-reported NAICS codes. Changing the assumptions used to calculate the revenue impact of the telecommunications carve-out by adopting the suggested changes in the additional written comments could increase the negative general fund revenue impact of this carve-out by an unknown amount.

Alternate Reasonable Approximation Language for Defense Contractors

The Department included optional alternate reasonable approximation language for defense contractors in the Workgroup's Recommended Draft Legislation. After circulating the draft report, Booz Allen Hamilton provided additional written comments indicating that they preferred a broader definition of defense contractor that included contracts with other agencies, including Department of Justice and Intelligence Agencies. They also requested clarification on whether the definition of defense contractor was applied at the taxpayer level or at the individual contract level. Lastly, they stated that they preferred that defense contractors be permitted to use the standard reasonable approximation methods and use population only as a secondary reasonable apportionment method when necessary.

The Department's estimates for the alternate reasonable apportionment language for defense contractors assumes that all contracts meeting the criteria in the definition would be required to use Virginia's share of U.S. population as the reasonable apportionment method. Requiring defense contractors to first use the standard reasonable approximation methods and, only when unable to do so, use population as a secondary reasonable apportionment method would likely decrease the negative revenue estimate associated with the alternate reasonable apportionment language for defense contractors by an unknown amount.

In response to this additional written comment, the Department has included an optional enactment clause that would require the Department to include a population-based secondary method of reasonable approximation for defense contractors in guidelines

adopted to implement MBS in Virginia. This enactment clause would replace the optional alternative reasonable approximation language in the Workgroup's Recommended Draft Legislation. It is important to note that these are "either or" options and both could not be included in any final legislation adopted. It is unclear which of these two options other defense contractors would favor.

Other Taxpayers

Some participants also mentioned that Virginia's COP "all or nothing" rules expose them to double taxation for sales made in MBS states. Virginia's COP rules require companies to report all of the sales of services and intangibles as Virginia sales, if a greater portion of the costs-of-performance of producing the service or intangible are in Virginia. Under the COP rules, many companies in Virginia must count all such sales as Virginia sales and then include the same sales in their sales factor in the MBS state in which the sale was made. By moving away from COP, Virginia companies in this situation can be more competitive and on equal footing with similar companies in neighboring MBS states.

Impact on Corporate Expansion Within and Into Virginia

Several participants in the workgroup expressed that MBS would benefit their industry and increase their ability to expand in Virginia. Virginia's current COP rules can lead to "all or nothing" tax scenarios for certain sales. Some companies currently pay no income tax in Virginia on the sales of services and intangibles because most of their costs-of-performance for these services are in another state. These companies are discouraged from expanding in Virginia, because, if they move too much of their costs into Virginia, the COP rules would require sourcing of all such sales to Virginia, including those sales already subject to tax in another state. This risk of Virginia's COP rules discouraging expansion could also apply to any industry specific carve-out from MBS legislation.

For example, consider a service company that pre-expansion, has 45% of its cost of performance for its sales in Virginia. In that case, some sales (i.e., sales to Virginia customers) are not taxed by any state, resulting in "nowhere income":

Service Company Prior to Expansion into Virginia		
% Costs-of-Performance	Other States With MBS N/A	Virginia With COP 45%
Apportionment Formula	Sales to Other State Customers in Other States's Sales Factors	No Sales Included in Virginia's Sales Factor

However, if that same service company expands into Virginia and that expansion results in 55% of its cost of performance for its sales to be in Virginia, then some sales (i.e., sales to customers in other states) will now be included twice, resulting in the income being double-taxed:

Service Company After Expansion into Virginia		
% Costs-of-Performance	Other States With MBS N/A	Virginia With COP 55%
Apportionment Formula	Sales to Other State Customers in Other States's Sales Factors	All Sales in VA's Sales Factor (Including Sales Already in Other State's)

Projected Impact on Economic Development

VEDP estimates the adoption of MBS would result in a total increase in employment of between 4,450 – 7,800 new jobs over a five-year period. These increases could be offset to some degree by employment declines that would have otherwise occurred in the sector. VEDP's estimate includes approximately 2,200 – 3,850 jobs for firms in the traded service sector most likely to be impacted by MBS, and an additional 2,250 – 3,950 indirect and induced jobs. Secondary jobs may take additional time to materialize and, as a result, some of the realization of this additional employment will trail the direct MBS job creation. (See Appendix G, VEDP MBS Estimates).

Projected Impact on Virginia Tax Revenue

Adopting MBS for Taxable Years 2027 and after would have an unknown impact on General Fund revenues beginning in Fiscal Year 2028. Developing a revenue impact for adopting market-based sourcing ("MBS") is significantly limited by insufficient data. Precisely estimating the revenue impact would require information regarding the income, accumulated net operating losses, and apportionment factors of out-of-state corporations that are not currently required to file income tax returns with Virginia but sell services and intangibles to Virginia customers.

However, based on data from the IRS Statistics of Income—including industry-specific net income information—and using Virginia's share of the 2023 US Census Bureau population estimates as a proxy for Virginia's market as compared to the United States as a whole, the Department was able to produce a speculative estimate that suggests this proposal would have the following impact on revenues:

- A negative General Fund revenue impact of approximately \$22.4 million in FY 2028 and \$1.1 million in FY 2029; and
- A positive General Fund revenue impact of approximately \$10.8 million in FY 2030 and \$18.1 million in FY 2031.

As discussed above, the Department was asked to analyze the revenue impact of carve-outs or special rules for defense contractors and the telecommunications industries. These modifications of generally applicable MBS rules in Virginia would have a negative general fund revenue impact as described in the chart below.

MBS Tax Revenue Impact from All Corporations Based on Increasing Levels of Compliance (in millions)					
	<u>FY 28</u>	<u>FY 29</u>	<u>FY 30</u>	<u>FY 31</u>	<u>Total</u>
Total Impact of MBS with No Modifications or Carve-Outs	(\$22.4)	(\$1.1)	\$10.8	\$18.1	\$5.4
Total Impact of MBS with Defense Modification	(\$27.9)	(\$3.5)	\$9.5	\$17.4	(\$4.5)
Total Impact of MBS with Telecomm Carve-Out	(\$23.6)	(\$1.6)	\$10.5	\$18.0	\$3.3
Total Impact of MBS with Defense Modification & Telecomm Carve-out	(\$29.1)	(\$4.0)	\$9.2	\$17.3	(\$6.6)

Recommendations

The workgroup produced the following recommendations:

- VEDP estimates adopting MBS would generally be positive for economic development in Virginia.
- Adopting generally-applicable MBS legislation would result in a fairer and more easily administrable tax policy than continuing to adopt MBS exceptions for certain taxpayers on a case-by-case basis.
- If the General Assembly chooses to enact MBS legislation, Virginia should adopt regulations similar to the MTC model to place Virginia in line with other states adopting MBS over the last ten years.

- If the General Assembly chooses to enact MBS legislation, the General Assembly should consider the potential impacts on economic development, taxpayers and the corporate income tax revenues of allowing a carve-out for the telecommunications industry and/or inclusion of a special reasonable approximation rule for defense contractors.
- The workgroup has included recommended draft legislative text for the adoption of MBS in Virginia.
 - This draft includes optional language for a telecommunications carve-out requested by the industry. If adopted, consideration would need to be given as to, at a minimum, the following:
 - Whether it should be limited to telecommunications companies, as the draft does, or whether a more expansive application to communication services should be used. The Department's revenue estimates were limited to telecommunication companies only.
 - Whether it should include a sunset provision and, if so, whether an offset provision is needed.
 - This draft also includes optional alternate reasonable approximation language for defense contractors requested by the industry. If adopted, consideration would need to be given as to, at a minimum, the following:
 - Whether it should be limited to contracts with the Department of Defense or expanded to contracts with other agencies, including the Department of Justice and intelligence agencies. The Department's revenue estimates were limited to contracts with the Department of Defense only.
 - Whether it should apply as an alternative to all the sourcing methodologies under the market-based sourcing legislation or only apply as an alternative for the purposes of reasonable approximation.
 - This draft includes optional language replacing the MTC throw-out rule.

APPENDIX A: Item 257(E), HB 1600

VIRGINIA STATE BUDGET

2025 Session

Budget Bill - HB1600 (Chapter 725)

Bill Order » Office of Finance » Item 257

Department of Taxation

Item 257	First Year - FY2025	Second Year - FY2026
Planning, Budgeting, and Evaluation Services (71500)	\$6,176,511	\$5,176,511 \$5,946,893
Tax Policy Research and Analysis (71507)	\$3,899,793	\$2,899,793
Appeals and Rulings (71508)	\$1,415,043	\$1,415,043 \$2,185,425
Revenue Forecasting (71509)	\$861,675	\$861,675
Fund Sources:		
General	\$6,176,511	\$5,176,511 \$5,946,893

Authority: §§ 2.2-1503, 15.2-2502, 58.1-202, 58.1-207, 58.1-210, 58.1-213, 58.1-816, and 58.1-3406, and Title 10.1, Chapter 14, Code of Virginia.

A. The Department of Taxation shall continue the staffing and responsibility for the revenue forecasting of the Commonwealth Transportation Funds, including the Department of Motor Vehicles Special Fund, as provided in § 2.2-1503, Code of Virginia. The Department of Motor Vehicles shall provide the Department of Taxation with direct access to all data records and systems required to perform this function. The Department of Planning and Budget shall effectuate the transfer of three full-time equivalent positions and sufficient funding to ensure the successful consolidation of this function.

B. Notwithstanding the provisions of § 58.1-202.2, Code of Virginia, no report on public-private partnership contracts shall be required in years following the final report upon the completion of contract or when no such contract is active.

C. The Department of Taxation shall report no later than September 1 on an annual basis, to the Chairmen of the House Appropriations, House Finance and Senate Finance and Appropriation Committees, on the amount of state sales and use tax revenues authorized to be remitted for the preceding fiscal year under the provisions of § 58.1-608.3, § 58.1-3851.1, and § 58.1-3851.2, of the Code of Virginia, as amended by the 2015 General Assembly.

D. Out of this appropriation, \$1,000,000 the first year from the general fund shall be used for initial costs associated with the replacement of the Department of Taxation's Integrated Revenue Management System (IRMS). Such funds shall be allocated in accordance with continued efforts related to the workgroup required by Item 273 Paragraph D of the 2022 and 2023 Appropriation Acts. Accordingly, the workgroup is hereby continued and directed to review the plan for implementation of an IRMS modernization project as developed by the Department of Taxation based upon recommendations of the workgroup's 2022 assessment. Such review shall include consideration of methodologies for refactoring and replacement, the project roadmap and timeline, costs and funding structure, and the governance structure required for the modernization effort. In addition, the workgroup shall provide periodic oversight of the implementation of the IRMS modernization project. The workgroup shall include the Secretary of Finance or his designee, staff from the House Appropriations and Senate Finance and Appropriations Committees, the Director of the Department of Planning and Budget, and the Chief Information Officer of the

Virginia Information Technologies Agency. The workgroup shall submit an update on its findings and recommendations to the Governor and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees by November 1, 2024, with an annual executive summary of the interim activity of the project implementation by November 1 of each subsequent year until implementation of a new system is complete.

E. The Department of Taxation shall assess implementing market-based sourcing for sales in the corporate income apportionment formula. The Department shall assess the administrative feasibility, the impact on major classifications of corporations operating in Virginia, the impact on corporate expansion within and into Virginia, and the projected impact on Virginia's tax revenue as a result of adopting market-based sourcing. The Department shall present recommendations to the Joint Subcommittee on Tax Policy for evaluation of the fiscal implications and incorporate any feedback from the Joint Subcommittee prior to the submission of the final report. The Department may establish a work group of stakeholders with the Secretary of Finance and the Chairs of the House Finance, House Appropriations, and Senate Finance and Appropriations Committees participating in selecting its members. The Department shall submit a report with recommendations by November 15, 2025 to the Chairs of House Finance, House Appropriations, and Senate Finance and Appropriations Committees.

F. The Department of Taxation shall convene a work group composed of tax practitioners experienced in the preparation of corporate tax returns involving net operating losses, including members recommended by the Taxation Section of the Virginia Bar Association and the Virginia Society of Certified Public Accountants. The work group shall study the treatment of net operating losses in Virginia when compared to other states and shall make recommendations to simplify such treatment in Virginia. The work group shall consider at a minimum: (i) transition rules to the proposed simplified method of determining net operating losses; (ii) the effective date of any such transition; and (iii) what legislative, regulatory, or guideline amendments would be necessary to best effectuate such transition. The work group shall complete its meetings by October 1, 2025, and the Department shall submit a report of the work group's findings and recommendations to the Chairs of the Senate Finance and Appropriations, House Finance, and House Appropriations Committee by November 1, 2025.

APPENDIX B: Written Comments

August 19, 2025

Mr. Austin Smith
Tax Law Analyst
Tax Legislation Division | Virginia Tax
P.O Box 27185
Richmond, Virginia 23261-7185

Dear Mr. Smith:

On behalf of CTIA®, the trade association for the wireless communications industry, thank you for the opportunity to provide comments to the working group on possible changes to Virginia’s statutes governing the apportionment of income for the purposes of the corporate income tax. Specifically, these comments address proposals to change from “cost of performance” (COP) to “market-based” sourcing of sales of services for purposes of the sales factor. If a shift to market-based sourcing is adopted, we encourage Virginia to align with several other states that have given communications providers the option to maintain COP sourcing to better reflect where their income is earned due to the unique multistate capital-intensive nature of our industry.

COP has been a longstanding part of the Multistate Tax Commission uniformity compact to promote uniformity in how states apportion the income of multistate businesses. COP rules recognize that, in the case of services, the income earned by a sale to a customer frequently results from work done across many states. The rule requires companies to source the income from the sale of a service to the state where the predominant portion of the income producing activity occurs.

The COP sourcing methodology is particularly effective and well-suited for the wireless communications industry because it best reflects how income is earned by the communications industry. Unlike other service-based companies, the wireless communications industry is defined by its unique business model and the massive physical networks essential to its services. It is fundamentally different, and the COP sourcing methodology recognizes the capital-intensive nature of the communications industry. It recognizes that the telecommunications infrastructure is located where our customers utilize the service across multiple jurisdictions.

American consumers in 2023 used over 100.1 trillion megabits of data on U.S. wireless networks, marking the biggest year-over-year increase in history and an 89% increase since 2021. To meet this demand, our members are investing tens of billions of dollars annually to update the nation’s wireless networks, including in Virginia, where the wireless industry supports 103,000 jobs and generates \$10.6 billion in annual GDP growth.

Some states have shifted to market-based sourcing to benefit in-state companies selling services outside the state and to ensure that companies that earn income selling services to a state’s residents pay more income taxes where they do not make significant capital investments or increase employment in the state. However, wireless providers make substantial network investments in Virginia and employ many Virginia residents.

We do not seek to pay less tax. Retaining COP would keep the status quo for income taxes paid by the wireless communications industry. It would not reduce what wireless providers are paying under the current law. However, it would prevent the tax volatility that market-based sourcing imposes on our industry and allow our industry to continue to focus on investing hundreds of millions in Virginia to expand and upgrade broadband networks.

Other states have recognized the importance of retaining a COP option for the wireless communications industry when they have generally shifted from COP to market-based sourcing. Most recently Arkansas, Idaho, Kansas, and Nebraska – have included special apportionment provisions for communications companies to more accurately reflect the industry’s unique and extensive investment in states where they conduct business.

For these reasons, we respectfully request that if the Working Group recommends a shift from COP to market-based sourcing, it allows communications providers the option to continue to apply the COP sourcing methodology to best reflect where their service income is earned.

Thank you for your consideration.

Sincerely,

Annissa Reed

Annissa Reed
Director, State and Local Affairs



August 29, 2025

Virginia Department of Taxation
Tax Legislation Division
P.O. Box 27185
Richmond, VA 23261-7185
Attn: Austin Smith, Tax Law Analyst
Subject: Proposed Virginia Market Based Sourcing

Dear Mr. Smith,

Thank you for the opportunity to participate on the workgroup to inform the Joint Subcommittee on Tax Policy on the proposed enactment of market-based sourcing as authorized by Item 257(E) of the 2025 Appropriation Act.

Booz Allen Hamilton Holding Corporation, including its wholly own subsidiaries ("Booz Allen" or "the Company") as an advanced technology company, builds technology solutions using artificial intelligence ("AI"), cyber, and other cutting-edge technologies to advance and protect the nation and its citizens. The Company supports critical missions for a diverse base of federal government customers, including nearly all the U.S. government's cabinet-level departments, as well as for commercial customers, both domestically and in select international locations.

Currently, sales of services and intangible personal property are sourced to Virginia if more of the cost of performing the income-producing activity takes place in Virginia than in any other state, referred to as the cost-of-performance ("COP") method. Virginia is considering whether sales of services and intangible personal property should be sourced to Virginia if the market for such sales is located in Virginia, referred to as market-based sourcing ("MBS"). Specifically, Virginia is considering the adoption of the Multistate Tax Commission ("MTC") uniform MBS sourcing rules adopted in 2015. Members of the workgroup have been asked to provide comments on this proposal to inform the workgroup report with recommendations to the Chair of House Finance, House Appropriations, and Senate Finance and Appropriations Committees.

With respect to MBS for sales factor apportionment purposes, it is my understanding that the MTC provisions provide generally that a sale of a general service to business customers should be sourced based on where such service is

Mr. Austin Smith, Tax Law Analyst
 August 29, 2025
 Page 2

delivered to (i.e. the market for the service). To the extent the location of where the general service to business customers is delivered cannot be determined, or for professional services to business customers (as that term is defined in the MTC provisions), the MTC provisions utilize a reasonable approximation. The reasonable approximation is based on the following hierarchal order:

- 1) Where the contract of sale is principally managed by the customer;
- 2) Where the customer places the order; or
- 3) The customer's billing address.

As indicated above, Booz Allen's primary customer is the federal government. For government contracting entities whose services are primarily provided to federal and state governments, sourcing based simply on where the contract is managed, where the order is placed, or the billing address of the customer does not consider that these services are, for the most part, being delivered to a government organization for use across multiple locations, states and/or countries. As such, Virginia should consider whether alternative approaches of reasonable approximation on a contract basis for government contractors is more appropriate including:

- Providing a provision that would allow for a government contractor to opt out of the MBS provisions and source based on the location of where direct labor hours are performed.
- Utilization of additional methods for reasonable approximation, for instance:
 - Location of direct labor hours (similar to the opt out above, but, in this case, utilizing direct labor hours as a reasonable approximation)
 - Population (U.S., worldwide, or specific countries, depending on the contract)
 - Data points specific to the branch of government/agency to which the contract relates (i.e. DoD, military branch, etc.) – base locations, agency headcount, facility locations, etc.
 - Other relevant metrics that a company determines may more closely align to the specific nature of the contracts

Mr. Austin Smith, Tax Law Analyst
August 29, 2025
Page 3

- Providing a provision specific to confidential or classified contracts where data regarding the customer or services may not be available.
 - Utilizing the percentage of sourcing from known contracts
 - Utilizing other methods discussed above

The MTC provisions include a general throw-out provision where a taxpayer must exclude revenue from the denominator in determining the sales apportionment factor to the extent the taxpayer cannot ascertain the state to which the receipts from the services are to be assigned using reasonable approximation or where receipts are assigned to a state where the taxpayer is not taxable. Operation of this provision tends to be punitive in nature. As such, Virginia should consider whether inclusion of this provision is warranted or consider modifications to the provision.

Whatever legislation adopting MBS may ultimately be enacted, clarity and specific guidance on how to apply the provisions is critical. Deference to taxpayer determination of reasonable approximation should also be adopted to mitigate unnecessary controversy, granted Virginia would certainly maintain the right to audit and challenge unreasonable positions. As noted above, alternative methods of reasonable approximation should also be considered, or other reasonable methods could be allowed to provide flexibility where the MTC specified methods result in unreasonable results.

Thank you for the opportunity to participate on this workgroup. We look forward to reviewing the draft report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew Robertson", with a stylized, flowing script.

BOOZ ALLEN HAMILTON

CC: Andrew Robertson
Director, Head of Tax
Booz Allen Hamilton



BROADBAND

Association of Virginia

August 19, 2025

Ms. Sarah Brooks
Director, Business and Financial Services
Virginia Economic Development Partnership

Mr. Austin Smith
Tax Analyst, Tax Legislation Division
Virginia Department of Taxation

Dear Ms. Brooks and Mr. Smith,

Subject: Retaining Cost of Performance Sourcing for Communications Providers

Below please find comments submitted on behalf of the VCTA - Broadband Association of Virginia.

We respectfully write to share our perspective on the impact of market-based sourcing on the communications industry and to urge your support for retaining cost of performance sourcing for communications providers as Virginia evaluates changes to their apportionment law.

Market-based sourcing is designed to allocate income based on the location of the customer, rather than where the cost associated with the service is performed. This model, intended to align the service sector more closely with sourcing rules for tangible personal property, often benefits in-state companies by shifting taxable income away from the state and reducing their overall tax burden.

However, the application of this model to communications providers results in a very different outcome—one that risks unintended and inequitable consequences. Our industry is fundamentally different from most service-based businesses. Communications services are delivered over vast, often national or regional, networks. Consideration of where the service is performed is essential to our business, since our services cannot be provided without the infrastructure and personnel that physically support the network. Unlike other industries that may adjust to tax rules by relocating operations or shifting resources to low-tax jurisdictions, communications providers do not have that flexibility. Our networks and workforce must be located where the service is performed. As such, market-based sourcing increases our exposure to tax volatility, where small shifts in an apportionment factor can create significant and unpredictable increases in tax liability.

At the same time, we continue to make substantial investments in broadband infrastructure in every state where we operate. While many in-state service businesses benefit from market-based sourcing and reinvest their tax savings into jobs and local development, communications providers—who operate as in-

state businesses in each jurisdiction in which we provide service—face rising tax burdens under this model without the benefit of flexibility or relief as we continue to invest in infrastructure in the state.

It is important to note: we are not requesting a reduction in our tax liability. We are simply asking to avoid an increase in liability that does not reflect the economic realities of our industry.

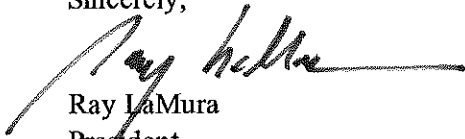
Recognizing this unintended burden, Kansas and Arkansas—the two most recent states to adopt market-based sourcing—have implemented exceptions for communications providers. These exceptions acknowledge both the unique position of our industry and the critical importance of continued investment in broadband infrastructure to support economic growth, digital inclusion, and public services.

We encourage your consideration of a similar exception or the continuation of cost of performance sourcing for communications providers in Virginia. Doing so would promote fairness, stability, and continued investment in the infrastructure that supports your constituents, communities, and economies.

Enclosed is a list of states that currently provide alternative sales factor sourcing rules for communications providers. While not exhaustive of all apportionment changes, it reflects the broader understanding among states of the unique considerations facing our industry as they consider apportionment changes.

We appreciate your attention to this matter and welcome any opportunity to provide additional information or discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray LaMura", with a long horizontal flourish extending to the right.

Ray LaMura
President

Broadband Association of Virginia

Attachment: Market-based Sourcing Distinctions for Communications Providers

MBS Enacted 2025 that includes special rules for communication companies

- Arkansas (MTC Compact Member): Senate Bill 567 was signed into law on April 16, 2025. The new law would move Arkansas from Cost of Performance (“COP”) to Market-Based Sourcing (“MBS”) for tax years beginning on or after January 1, 2026. Communication service providers may elect to continue using COP sourcing until December 31, 2035.
- Kansas (MTC Compact Member): Kansas currently uses the COP method for sourcing sales. Based on enacted legislation HB 2231 (2025) Kansas will switch from COP to MBS beginning in 2027. The new law allows communication service providers to continue to use COP.

Other MBS States with special rules for communication companies

- Idaho (MTC Compact Member): March 22, 2022, HB 563 enacted Single Sales Factor apportionment formula with Market-Based sourcing of sales. However, HB 563 carved out certain taxpayers, like telephone and communications companies, and allowed them to use the equal weighted 3 factor formula and a COP.
- Tennessee (MTC Associate Member): In 2023, HB 323 was enacted requiring all taxpayers to use single sales factor, with the exception of telecommunications companies. A telecommunications company, and internet and video service providers may use a three-factor formula with triple-weighted sales factor. Communications companies are also provided a special sourcing methodology based on the average of COP and MBS. To qualify for the special sourcing methodology, a taxpayer must either incur (in aggregate for all filing entities) qualified expenditures in an amount greater than \$150m or make sales that are subject to the sales tax in excess of \$150m on annual basis.
- California (MTC Sovereignty Member): provides special sourcing for receipts from the sale of telecommunications services to individuals based on Net Plant Ratio. Receipts from interstate communication and wireless services will be attributable to this state based upon the ratio of California net plant facilities over total net plant facilities used to provide those services using a consistent methodology of valuing the property, for example, net book basis of the assets that is determined from Phone Corp's books and records. California adopted special sourcing rules for cable and video providers. Cable companies that make a minimum investment of \$250m for the taxable year utilize 50/50 special sourcing rules that effectively result in 50% of qualified sales that would be sourced to California under MBS to be attributed to the State.
- Nebraska (MTC Associate Member): Nebraska adopted MBS for corporate income tax purposes for tax years beginning on or after January 1, 2014. However, an exception was provided for communications service providers, allowing them to continue file income tax returns based on COP sourcing methodology.

Status of MBS in neighboring states and the treatment of communications companies

- Kentucky (MTC Sovereignty Member): In 2018, the state adopted the use of Single Sales Factor and MBS. The three-factor formula with double-weighted sales factor and COP methodologies, however, were retained for communications, cable or Internet access providers.
- North Carolina (MTC Associate Member): North Carolina moved to MBS effective January 1, 2020. North Carolina has a 2.5% CNI rate and does not provide special rules for communications companies. Prior the adoption of MBS, North Carolina was a proportional COP state and utilized sourcing rules for telephone companies similar to MBS.
- West Virginia (MTC Sovereignty Member): West Virginia adopted MBS and single sales factor through House Bill 2026, which was signed into law on April 9, 2021. The new sourcing rules became effective for tax years beginning on or after January 1, 2022. West Virginia law does not provide any special rules for communications companies.
- Pennsylvania (MTC Associate Member): Pennsylvania adopted MBS for corporate income tax purposes through House Bill 1342, which was enacted on July 8, 2022. The law applies to tax years beginning after December 31, 2022. Pennsylvania law does not provide any special rules for communications companies.
- Maryland (MTC Associate Member): SB 1090 was enacted in 2018 and phased in the Single Sales Factor over a five-year period. SB 1090 also provided an annual election that allows specified corporations meeting certain requirements to use a three-factor formula (double-weighted sales).
- South Carolina (MTC Associate Member): South Carolina requires that receipts from services are sourced based on where the “income-producing activity” is performed. The South Carolina code does not define “income-producing activity.” In 2019, a legislation was enacted to clarify the application of COP sourcing rules for communications companies (SB 408), providing that receipts from services provided over the network are attributable to the state based on COP, including the costs of acquiring programming distribution rights and constructing and maintaining distribution infrastructure. South Carolina also provides special sourcing rules for telephone services, providing that sourcing of interstate revenue shall be allocated pursuant to FCC accounting procedures.

August 21, 2025

Market-Based Sourcing Working Group
Virginia Department of Taxation
P.O. Box 27185
Richmond, VA 23261-7185
Phone: (804) 371-5107
E-Mail: Austin.Smith@tax.virginia.gov

Via Email

Re: Comments Regarding Market Based Sourcing in Virginia

Dear Market-Based Sourcing Working Group Representative,

Nodal Exchange, LLC and its wholly owned subsidiary, Nodal Clear, LLC (together, “Nodal”) appreciate the opportunity to comment on the Virginia Department of Taxation, Market-Based Sourcing Working Group’s (“Working Group”) recommendation to the Virginia General Assembly on adopting market-based sourcing for sales in the corporate income apportionment formula in Virginia. Nodal Exchange and Nodal Clear are both headquartered in Tysons Corner, Virginia. Nodal Exchange is a derivatives exchange for power (electricity), natural gas, and environmental products which are cleared through its clearing house, Nodal Clear. Nodal Clear provides price, credit, and liquidity risk management to its market participants which are in the North American commodities markets. Nodal is a federally regulated financial services company in the energy sector. Nodal provides the following comment in support of Virginia adopting market-based sourcing.

As noted above, Nodal’s sole location is its headquarters in Tysons Corner, Virginia. Nodal employs over 125 employees at this location. Nodal has invested significantly in its headquarters, and its highest payroll is within Virginia, which currently uses cost-of-performance tax sourcing. However, the majority of Nodal’s market participants are outside of Virginia—instead they are in market-based sourcing states. Because the majority of market participants are in market-based sourcing states, Nodal apportions its revenue to Virginia and to the location of its customers in such states. That apportionment results in a degree of double-taxation at the state level which has posed a significant tax burden on the company as it has grown. Nodal hopes to continue its investment and hiring growth in Virginia over the coming years and a change to market-based sourcing would help facilitate this.

Virginia’s existing cost-of-performance rule significantly impacts service companies that are headquartered in Virginia but also operate in multiple states, particularly in Nodal’s case where nearly 100% of its operations are in Virginia but it has a majority of customers located in market-based sourcing states. The tax burden caused by Virginia’s cost-of-performance rule limits Virginia-based service companies’ growth from a financial perspective. Furthermore, the tax burden of the existing rule creates a significant disadvantage for Nodal compared to competitors operating in market-based sourcing states. This inequity in taxation rules, based

solely on the location of Nodal's operations, has proved to be a significant challenge that Nodal would not otherwise face if Virginia became a market-based sourcing state.

Nodal's experience highlights the challenges posed by Virginia's cost-of-performance tax sourcing, particularly for businesses with a high concentration of operations in the state but a broader market base in market-based sourcing states. Transitioning to a market-based sourcing approach would not only help eliminate this source of double-taxation for Nodal and similarly situated companies, but also supports Nodal's continued growth, investment, and hiring in Virginia. By aligning tax sourcing with other states, Virginia could foster a more equitable and competitive environment for Nodal and similar service-oriented companies, ultimately encouraging businesses to remain and/or expand within the state.

Nodal encourages the Working Group to conduct a thorough review of the potential economic advantages of switching to market-based sourcing for sales in the corporate income apportionment formula and to recommend that the Virginia General Assembly passes appropriate legislation to adopt market-based sourcing in the state.

Thank you for your consideration and Nodal looks forward to any potential collaboration on this topic.

Respectfully submitted,

/s/ Palloma Peterson
Palloma Peterson
Chief Financial Officer
Nodal Exchange & Nodal Clear

Virginia 2025 Market-Based Sourcing Workgroup

Comments

Submitted by Lori Nieto, State Tax Director, Northrop Grumman Corp.

Aerospace & Defense Industry (A&D)

Background

- Primary customer base for A&D is the United States Government (USG)
- Majority of contracts are with USG or Classified customers whose identities and locations cannot be disclosed based on federal law due to national security risk
- Commercial/subcontractor contracts are with non-USG customers
- USG contract terms do not specify where the benefit of the service is received
- USG has locations in all 50 states and in many foreign countries

Market-based sourcing for A&D

In states which cascade market-based sourcing (MBS) to apportion where the benefit of the service is received, generally A&D cannot determine the location based on books & records or USG/Classified contract terms. When reasonable approximation is the next tier in the cascade, this presents audit challenges for A&D. Auditors frequently have a different opinion than the Company as to what constitutes a reasonable approximation method for USG/Classified contracts resulting in audit assessments and appeals drawn out over years.

To prevent years in appeals for A&D and the state, an industry specific approach may be taken in which the next tier in the cascade is defined and is not left to the discretion of the State Tax Commissioner's Department. Utilization of a population reasonable approximation may improve consistency.

California and some other states have adopted a population reasonable approximation when terms of the contract and books and records do not provide the location where the benefit is received.

California Proposed Regulation Section 25136-2

California has taken a U.S. population and, if relevant, other countries population approach in its Proposed Regulation Section 25136-2 which states:

(10)(7) “Reasonably approximated” means that, considering all sources of information other than the terms of the contract and the taxpayer's books and records kept in the normal course of business, the location of the market for the benefit of the services or the location of the use of the intangible property is determined in a manner that is consistent with the activities of the customer to the extent such information is available to the taxpayer. Reasonable approximation shall be limited to the jurisdictions or geographic areas where the customer or purchaser, at the time of purchase, will receive the benefit of the services or use of the intangible property, to the extent such information is available to the taxpayer. If population is a reasonable approximation, the population used shall be the U.S. population as determined by the most recent U.S. census data as of the beginning of the taxable year. If it can be shown substantiated by the taxpayer that the benefit of the service is being substantially received or intangible property is being materially used outside the U.S., then the populations of those other countries foreign jurisdictions or geographic areas where the benefit of the service is being substantially received or the intangible property is being materially used shall be added to the U.S. population. Information that is specific in nature is preferred over information that is general in nature.



RE: MBS Workgroup: Comments Due By August 20

From Emily Walker <ewalker@vscpa.com>

Date Tue 8/26/2025 1:49 PM

To Smith, Austin (TAX) <Austin.Smith@tax.virginia.gov>

Cc Cunningham, Ryan (TAX) <Ryan.Cunningham@tax.virginia.gov>; Savage, James (TAX) <James.Savage@tax.virginia.gov>; Hamilton, Cassandra (TAX) <cassandra.hamilton@tax.virginia.gov>; Duffey, Vickie (TAX) <vickie.duffey@tax.virginia.gov>

Austin

Thank you for the opportunity to provide feedback on the MBS Workgroup and our apologies for not getting back to you sooner. One area we believe warrants further consideration is the interaction between market-based sourcing and nexus/filing requirements.

Historically, Virginia has maintained that a positive property, payroll, or sales factor creates Virginia source income, thereby triggering nexus and a filing obligation. Under the current cost of performance (COP) rules, many out-of-state service providers have not had Virginia sales and thus have not been required to file. However, with the adoption of market-based sourcing, these same providers may now have sales sourced to Virginia due to their customer base, potentially creating a new filing obligation.

We recommend that the Department provide clear guidance on:

- Nexus implications of market sourcing for out-of-state service providers.
- Thresholds or standards for determining when a taxpayer is subject to Virginia tax.
- Whether Virginia will continue its administrative practice of extending PL 86-272 protections to service providers.
- How to handle uncertain sourcing scenarios, such as when services are provided to government entities and the location of benefit is unclear.

Clarity in these areas will be essential for taxpayers to understand their obligations and ensure compliance.

We appreciate your consideration of these points and look forward to continued collaboration.

Regards,
Emily

Emily Walker, CAE
Vice President, Advocacy & Pipeline
Virginia Society of CPAs
(804) 612-9428
vscpa.com | [Connect](#)
[LinkedIn](#) | [Twitter](#) | [Facebook](#)



October 28, 2025

James J. Alex, Commissioner
Virginia Department of Taxation
600 East Main Street
Richmond, VA 23219

Dear Commissioner Alex,

Thank you for providing a copy of the draft report, *Study Regarding Adopting Market-based Sourcing in Virginia*, for our review as requested by staff of the Senate Finance and Appropriations Committee (SFAC) and approved by the JLARC chair. SFAC staff specifically requested that JLARC be consulted regarding the revenue estimates and projected economic development if the state were to adopt market-based sourcing (MBS), including the sector-specific carve-outs that were considered by the Market-based Sourcing workgroup that was created as directed in the 2025 Appropriation Act (Chapter 725, Item 257 (E)).

Revenue impact estimates

Virginia Tax estimates that adopting MBS would have a negative general fund revenue impact in FY28 (-\$22.4 million) and FY29 (-\$1.1 million) before turning positive in FY30 (\$10.8 million) and FY31 (\$18.1 million). JLARC staff reviewed this estimate and found it to be based on reasonable assumptions using appropriate available data. JLARC staff also reviewed the assumptions and methodology used to develop the estimates for (1) allowing defense contractors to modify how income is apportioned to Virginia under MBS and (2) allowing telecommunications companies to continue to apportion their income to Virginia under the current cost of performance methodology. Allowing these two carve-outs would increase the revenue losses estimated for FY28 and FY29 and reduce the revenue gains in FY30 and FY31. JLARC staff also found these estimates to be based on reasonable assumptions and appropriate available data.

These revenue impacts appear to be consistent with findings of peer-reviewed research of states that have adopted MBS that MBS does not adversely impact state corporate income tax revenue. Although the Virginia Tax revenue estimates from adopting MBS are negative in FY28 and FY29, the negative impact occurs because of the timing of compliance. Based on past experience, Virginia Tax assumes that compliance will be lower in the first several years after adoption, with companies experiencing a decrease in their tax liability under MBS complying earlier than those experiencing an increase in tax or becoming subject to Virginia tax because of the change to MBS.

Economic development impact

The Virginia Economic Development Partnership (VEDP) estimated that the adoption of MBS would result in 2,200 to 3,850 additional direct jobs annually in traded service sector firms, for a five-year period. VEDP indicates this increase could be offset by employment declines that would have otherwise occurred in the sectors. MBS adoption would also result in an additional 2,250 to 3,950 induced and indirect jobs annually. As indirect and induced jobs may take additional time to materialize, some of this additional employment will likely be realized after the five-year period.

JLARC staff also found these estimates to be based on reasonable assumptions using appropriate available data. Specifically, these estimates are based on similar methodology used in peer-reviewed research of states that have adopted MBS. The research found that after a state enacts MBS, the total number of employees in affected industries increases by approximately 3.5 percent, on average, over the five years after adoption. Because Virginia would be a late adopter of MBS, VEDP assumed the job creation impact would be less as suggested in the research, and estimated the increase in jobs because of MBS may more likely range from 2.5 percent to 3 percent.

Please contact me at 804-371-4572 (hgreer@jlarc.virginia.gov) or Ellen Miller at 804-371-4577 (ejmiller@jlarc.virginia.gov) if you have any questions about our review. Thank you again for giving us an opportunity to review this report.

Sincerely,

A handwritten signature in cursive script that reads "Hal E. Greer".

Hal E. Greer
Director

RE: Study Regarding Adopting Market-Based Sourcing in Virginia Draft Report

Robertson, Andrew [USA] Robertson_Andrew@bah.com

To: Smith, Austin (TAX)

Cc: Cunningham, Ryan (TAX); Savage, James (TAX); Hamilton, Cassandra (TAX); Duffey, Vickie (TAX)

Booz Allen Hamilton Restricted

Good morning, Austin,

Thank you for the consideration of our comments in preparing the draft report. We have a few additional comments as outlined below for Appendix C.

- In paragraph D.2., note that there are contracts with the United States beyond just the Department of Defense, now Department of War (“DoW) where the location of the receipt of the benefit of the service cannot be determined using a reasonable amount of effort, or where the determination of the location of ultimate use of the technology/product may be classified or cannot otherwise be determined or divulged (i.e. Homeland Security, Intelligence Agencies, Department of Justice, etc.) As such, the limitation that this provision applies only to a defense contractor as defined may be defined too narrowly and perhaps should apply to government contracts with the United States or other state or foreign government.
- It is not clear if the provision in paragraph D.2. is to apply to all contracts of a company that meets the definition of a defense contractor as defined, or rather this provision is to apply only to contracts with the DOW of a company that meets the definition of a defense contractor. If the provision is limited to DOW contracts, then are all other contracts by definition to fall into the “other taxpayer” category?
- The language in paragraph D.2. seems to exclude a company defined as a defense contractor from applying the reasonable approximation as allowed in paragraph D.1. that is available to all other taxpayers. Defense contractors should also be able to avail themselves of reasonable approximation under paragraph D.1. and then to the extent necessary default to the population estimation prescribed in paragraph D2. As currently drafted, defense contractors seem to be restricted to using population as a reasonable approximation where all taxpayers can determine other means of reasonable approximation and then if necessary utilize population.

Thank you for your consideration and I would be pleased to address any further questions or comments.

Best regards,

Andrew Robertson

Andrew Robertson
Director, Head of Tax
(571) 301-0715
robertson_andrew@bah.com

Booz Allen
BoozAllen.com



October 24, 2025

Ms. Sarah Books
Director, Business and Financial Services
Virginia Economic Development Partnership

Mr. Austin Smith
Tax Analyst, Tax Legislation Division
Virginia Department of Taxation

Dear Ms. Brooks and Mr. Smith,

We would like to begin by expressing our appreciation to the work group for its thoughtful consideration of the communications industry and for recommending a carve-out that acknowledges the unique nature of this sector. This recognition helps ensure that the final framework remains equitable, practical, and aligned with the realities of how communications services are delivered today.

However, we would like to note a limitation in the current recommendation. The proposed language is restricted to "telecommunications" and does not encompass the broader communications industry that provides similar services. The attached updated language addresses this issue by amending the proposed rule to include all providers of communications services and Internet access services. This update is essential to ensuring fairness, clarity, and administrative efficiency across the industry.

The proposed updates accomplish the following:

- **Reflect Industry Convergence:** As the industry continues to evolve, many providers of communications services now also offer Internet access and video programming services in addition to traditional telephone services. The updated language recognizes this convergence and ensures that all providers—regardless of the specific services offered—are treated equally.
- **Remove the "Sunset" Provision:** Eliminates the sunset provision that would repeal the election in 2033, providing greater certainty for taxpayers and auditors and more accurately reflects the basis for the election as described above.
- **Align with Existing Tax Methodologies:** The updated language establishes an election methodology consistent with other Virginia tax elections. This consistency simplifies administration for both the Department of Taxation and eligible taxpayers.

In summary, these proposed updates promote equitable treatment among service providers, and enhance compliance and administrative efficiency. We again thank the work group for its diligence and collaborative approach in developing these recommendations.

Thank you for your consideration of this important update.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray LaMura", with a long horizontal flourish extending to the right.

Ray LaMura
President
Broadband Association of Virginia

October 24, 2025

Mr. Austin Smith
Tax Law Analyst
Tax Legislation Division | Virginia Tax
P.O Box 27185
Richmond, Virginia 23261-7185

Dear Mr. Smith:

On behalf of CTIA®, the trade association for the wireless communications industry, we appreciate the Department of Taxation's continued engagement on the market-based sourcing (MBS) draft report and its recognition of the unique nature of the telecommunications industry.

As we noted in our prior comments, the cost of performance (COP) method best reflects where value is created in our industry, through ongoing investment in and maintenance of infrastructure that enables connectivity across Virginia and the nation. We appreciate the Department's acknowledgment of this point, however, the current draft proposal to allow a limited five-year COP election tied to the telecommunications minimum tax does not align with that understanding. The wireless industry's capital investments and operational footprint are continuous and long-term. A temporary election undermines that reality and would create inconsistency for companies planning multi-year infrastructure projects. We respectfully urge the Department to make the COP election permanent.

Moreover, while the Department's proposal may be modeled after Arkansas, even Arkansas offers a 10-year COP election period, which itself is an incongruity; states that truly recognize the unique, enduring nature of the telecommunications industry do not time-limit the election, as exemplified by comprehensive solutions adopted in Kansas, Kentucky, and Tennessee. We strongly urge the Department to consider models such as these, which provide more appropriate and permanent telecommunications COP carve-outs.

However, if the current draft is pursued, it introduces several substantial and concerning new uncertainties and complexities that need to be addressed. First, defining "telecommunications company" by reference to Virginia's telecommunications minimum tax does not encompass the scope of the industry, which is not limited to telephone services, such as providing Internet access services. We recommend instead using a definition more consistent with the industry's business activities. Second, the draft does not address application of the election for consolidated filers. We recommend clarifying that the election maintains a consolidated group's existing COP sourcing and filing. Lastly, limiting the COP election to five years would trigger a significant financial reporting impact under Generally Accepted Accounting Principles (ASC 740), as it constitutes a future, mandatory change in tax method. This would require companies to record large, deferred tax expenses immediately after enactment, affecting earnings and potentially stock value. We recommend including an offset provision, like Kansas's, which allows for the deferred tax liability adjustment to be recognized over time.

For these critical reasons, we respectfully request that communications providers are allowed to continue to apply the COP sourcing method consistent with the long-term investments the providers have made and continue to make in Virginia. This should be achieved in a manner that maintains consistency with providers' current compliance under Virginia's existing COP sourcing method and with the established framework of Virginia's corporate income tax system.

Thank you for your consideration.

Sincerely,

Annissa Reed

Annissa Reed
Director, State and Local Affairs



Re: Study Regarding Adopting Market-Based Sourcing in Virginia Draft Report

From Serge Agbre <agbre@nodalexchange.com>

Date Fri 11/7/2025 4:22 PM

To Cunningham, Ryan (TAX) <Ryan.Cunningham@tax.virginia.gov>; Smith, Austin (TAX) <austin.smith@tax.virginia.gov>; Savage, James (TAX) <james.savage@tax.virginia.gov>; Hamilton, Cassandra (TAX) <cassandra.hamilton@tax.virginia.gov>; Duffey, Vickie (TAX) <vickie.duffey@tax.virginia.gov>

Cc Palloma Peterson <peterson@nodalexchange.com>; Will Clampitt <clampitt@nodalexchange.com>; Kyle Hibson <hibson@nodalexchange.com>; Ken McCracken <mccracken@nodalexchange.com>

Dear Ryan,

Thanks for your response. Nodal would appreciate it if the clarification you provided were addressed in the report. Specifically, we believe it would be beneficial if the report explained that current apportionment methods will not change as a result of the switch to market based sourcing for sales other than tangible personal property.

Regards,
Serge

cc: Palloma Peterson
Chief Financial Officer & Treasurer

On Mon, Nov 3, 2025 at 4:37 PM Cunningham, Ryan (TAX) <Ryan.Cunningham@tax.virginia.gov> wrote:

Thank you for your questions. The draft legislative text included in the report would not change any taxpayer's method of apportionment, but rather would only change how the sales factor is calculated for sales other than tangible personal property. All sales, other than sales of tangible personal property, would be sourced to Virginia using MBS unless a carve-out for specific sales is adopted.

We are currently preparing the final report for publication and as part of that process we can include written comments we have received. Would you like your questions to be included as part of the report, or are they just for clarification purposes only?

If you would like further clarification please feel free to contact me,

Thank you,

Ryan Cunningham
Income Tax Team Lead
Tax Legislation Division | Virginia Tax
P.O Box 27185 | Richmond, Virginia 23261-7185
(804) 371-0919 | ryan.cunningham@tax.virginia.gov

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From: Serge Agbre <agbre@nodalexchange.com>

Sent: Friday, October 31, 2025 3:57 PM

To: Smith, Austin (TAX) <Austin.Smith@tax.virginia.gov>; Cunningham, Ryan (TAX) <ryan.cunningham@tax.virginia.gov>; Savage, James (TAX) <james.savage@tax.virginia.gov>; Hamilton, Cassandra (TAX) <cassandra.hamilton@tax.virginia.gov>; Duffey, Vickie (TAX) <vickie.duffey@tax.virginia.gov>

Cc: Palloma Peterson <peterston@nodalexchange.com>; Will Clampitt <clampitt@nodalexchange.com>; Kyle Hibson <hibson@nodalexchange.com>; Ken McCracken <mccracken@nodalexchange.com>

Subject: Re: Study Regarding Adopting Market-Based Sourcing in Virginia Draft Report

Dear Austin,

Thank you for providing the Study Regarding Adopting Market-Based Sourcing in Virginia draft report.

Nodal has reviewed the provided materials and the existing requirements for Virginia financial corporations under 23 Va. Admin. Code § 10-120-250. We would appreciate clarification on how the single-sales factor for financial corporations will be calculated if Virginia transitions from cost of performance to market-based sourcing. Our review has raised the following questions:

1. Will financial corporations continue to apportion based on a single-sales factor?
2. If so, will the calculation of the single-sales factor still be based on the Cost of Performance method, or will it transition to Market-Based Sourcing?

Could your team address these points in the final report, or provide clarification through other means? Please let us know if you would prefer these comments to be submitted in a more formal letter.

Thank you for your time and attention to these matters.

Regards,
Serge Agbre

cc: Palloma Peterson
Chief Financial Officer & Treasurer

On Fri, Oct 17, 2025 at 5:42 PM Smith, Austin (TAX) <Austin.Smith@tax.virginia.gov> wrote:

Good evening,

We apologize in advance for the delay in distributing this Study Regarding Adopting Market-Based Sourcing in Virginia draft report. Thank you for your patience.

Should you have any written comments on the draft report attached to this email, please provide them to us by next Friday, October 24.

Pursuant to Item 257(E) of the 2025 Appropriations Act, the final report with recommendations will be submitted to the Chairs of House Finance, House Appropriations, and Senate Finance and Appropriations Committees by November 15, 2025.

Let us know if you have any questions.

Thank you,

Austin Smith

Tax Law Analyst

Tax Legislation Division | Virginia Tax

P.O Box 27185 | Richmond, Virginia 23261-7185

(804) 371-5107 | austin.smith@tax.virginia.gov

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--

Serge B. Agbre

Assistant General Counsel

Nodal Exchange, LLC

Nodal Clear, LLC

1921 Gallows Road, 3rd Floor

Tysons Corner, Virginia 22182

P - (703) 962-9811

E - agbre@nodalexchange.com

<http://www.nodalexchange.com>

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Serge B. Agbre

Assistant General Counsel

Nodal Exchange, LLC

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<http://www.nodalexchange.com>

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APPENDIX C: Workgroup's Recommended Draft Legislation

**Workgroup Recommended
Draft Legislation**

Market Based Sourcing

A BILL to amend and reenact §§ 58.1-416, as it is currently effective and as it may become effective, 58.1-422.4, and 58.1-422.5 of the Code of Virginia; and to repeal the third enactments of Chapter 256 and 257 of the Acts of Assembly of 2022, relating to sourcing of certain sales.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-416, as it is currently effective and as it may become effective, 58.1-422.4, and 58.1-422.5 of the Code of Virginia are amended and reenacted:

§ 58.1-416. (Contingent expiration date) When certain other sales deemed in the Commonwealth.

A. Sales, other than sales of tangible personal property, are in the Commonwealth if the taxpayer's market for the sales is in the Commonwealth and the taxpayer's sales in Commonwealth for the taxable year exceed \$100,000 in aggregate. Except as provided in subsection B and E, the taxpayer's market for sales is in the Commonwealth:

1. In the case of sale, rental, lease or license of real property, if and to the extent the property is located in the Commonwealth;

2. In the case of sale of a service, if and to the extent that the benefit of the service is received at a location in the Commonwealth; and

3. a. In the case of intangible property that is rented, leased, or licensed, if and to the extent that the property is used in the Commonwealth. For purposes of this subdivision a, intangible property utilized in marketing a good or service to a consumer is "used in the Commonwealth" if that good or service is purchased by a consumer who is in the Commonwealth; and

b. In the case of intangible property that is sold, if and to the extent that the property is used in the Commonwealth. For purposes of this subdivision b, (i) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a

specific geographic area is "used in the Commonwealth" if the geographic area includes all or part of the Commonwealth; (ii) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property are treated as receipts from the rental, lease or licensing of such intangible property under subdivision a; and (iii) all other receipts from a sale of intangible property are excluded from the numerator and denominator of the sales factor. Sales other than sales of tangible personal property, are in the Commonwealth if:

1. The income-producing activity is performed in the Commonwealth; or
2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.

B. 4. For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a debt buyer's business.

2. For property information and analytics firms, as defined in § 58.1-422.4, that meet the requirements set forth in § 58.1-422.4, sales of services are in the Commonwealth if they are derived from transactions with a customer or client who receives the benefit of the services in the Commonwealth. Such rule shall apply regardless of the location of a property information and analytics firm's business operations.

C. The taxes under this article on the sales described under ~~subsection B~~ this section are imposed to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. For the collection of such taxes on such sales, it is the intent of the General Assembly that the Tax Commissioner and the Department assert the taxpayer's nexus with the Commonwealth to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law.

D. 1. If necessary information is not available to the taxpayer to determine whether a sale other than a sale of tangible personal property is in the Commonwealth pursuant to the provisions of subsections ~~B and C~~ A and B, the taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided that the taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has been undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion of such sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not have as a principal purpose the avoidance of any tax due under this article. The Department may implement procedures for obtaining its approval to use an estimate. The Department shall adopt remedies and corrective procedures for cases in which the Department has determined that the sourcing rules for sales other than sales of tangible personal property have been abused by the taxpayer, which may include reliance on the location of income-producing activity and direct costs of performance as described in subsection A of § 58.1-416, as it was in effect for taxable years beginning before January 1, 2027.

Optional: Method A—Alternate Reasonable Apportionment for Defense Contractors

[OPTIONAL 2. In the case of a sale, other than the sale of tangible personal property, pursuant to a contract with the United States by a taxpayer that is a defense contractor as defined by 50 U.S.C. § 4552, where the location of the receipt of the benefit of the service cannot be determined under subsection A or B, using a reasonable amount of effort undertaken in good faith, then the taxpayer shall estimate the dollar value or portion of such sale in the Commonwealth using the Commonwealth's share of the total population of the relevant geographical market. **OPTIONAL** For all other taxpayers, if taxpayer cannot ascertain the state or states to which a sale are to be assigned pursuant to the provisions of subsection A, subsection B and subdivision D 1, using a reasonable amount of effort undertaken in good faith, the taxpayer shall estimate the dollar value or portion of such sale in the Commonwealth using the Commonwealth's share of the total population of the relevant geographical market.

Optional Throw-out Rule Replacement

3. The population used in subdivision D 2, shall be the U.S. population as determined by the most recent U.S. census data as of the beginning of the taxable year. If it can be substantiated by the taxpayer that the service is delivered to a location or intangible property is being materially used outside the U.S., then the populations of those other countries foreign jurisdictions or geographic areas where the service is being delivered or the intangible property is being materially used shall be added to the U.S. population.]

[OPTIONAL E. 1. Notwithstanding any other provision of this section, a taxpayer that is a "telecommunications company" as defined by § 58.1-400.1, may elect to assign sales, other than sales of tangible personal property, under subdivision E 3 for taxable years beginning on or after January 1, 2027, but before January 1, 2033.

2. An election under this subsection shall be made on the taxpayer's return for the first taxable year for which the taxpayer is eligible for the election, and once made, an election under this subsection cannot be changed for subsequent years without approval in writing by the Tax Commissioner.

3. Sales, other than sales of tangible personal property, are in the Commonwealth if:

a. The income-producing activity is performed in the Commonwealth; or

b. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.]

§ 58.1-416. (Contingent effective date) When certain other sales deemed in the Commonwealth.

A. Sales, other than sales of tangible personal property, are in the Commonwealth if the taxpayer's market for the sales is in the Commonwealth and the taxpayer's sales in Commonwealth for the taxable year exceed \$100,000 in aggregate. Except as provided in subsection B and E, the taxpayer's market for sales is in the Commonwealth:

1. In the case of sale, rental, lease or license of real property, if and to the extent the property is located in the Commonwealth;

2. In the case of sale of a service, if and to the extent that the benefit of the service is received at a location in the Commonwealth; and

3. a. In the case of intangible property that is rented, leased, or licensed, if and to the extent that the property is used in the Commonwealth. For purposes of this subdivision a, intangible property utilized in marketing a good or service to a consumer is "used in the Commonwealth" if that good or service is purchased by a consumer who is in the Commonwealth; and

b. In the case of intangible property that is sold, if and to the extent that the property is used in the Commonwealth. For purposes of this subdivision b, (i) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in the Commonwealth" if the geographic area includes all or part of the Commonwealth; (ii) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property are treated as receipts from the rental, lease or licensing of such intangible property under subdivision a; and (iii) all other receipts from a sale of intangible property are excluded from the numerator and denominator of the sales factor. Sales other than sales of tangible personal property, are in the Commonwealth if:

~~1. The income-producing activity is performed in the Commonwealth; or~~

~~2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.~~

B. 4. For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a debt buyer's business.

~~2. For property information and analytics firms, as defined in § 58.1-422.4, that meet the requirements set forth in § 58.1-422.4, sales of services are in the Commonwealth if they are derived from transactions with a customer or client who receives the benefit of the services in the Commonwealth. Such rule shall apply regardless of the location of a property information and analytics firm's business operations.~~

~~3. For Internet root infrastructure providers, as defined in § 58.1-422.5, sales of services are in the Commonwealth if they are derived from sales transactions with a customer or client who receives the benefit of the services in the Commonwealth. Such rule shall apply regardless of the location of an Internet root infrastructure provider's operations.~~

C. The taxes under this article on the sales described under this section ~~subsection B~~ are imposed to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. For the collection of such taxes on such sales, it is the intent of the General Assembly that the Tax Commissioner and the Department assert the taxpayer's nexus with the Commonwealth to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law.

D. 1. If necessary information is not available to the taxpayer to determine whether a sale other than a sale of tangible personal property is in the Commonwealth pursuant to the provisions of this section ~~subsections B and C~~, the taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided that the taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has been undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion of such sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not have as a principal purpose the avoidance of any tax due under this article. The Department may implement procedures for obtaining its approval to use an estimate. The Department shall adopt remedies and corrective procedures for cases in which the Department has determined that the sourcing rules for sales other than sales of tangible personal property have been abused by the taxpayer, which may include reliance on

the location of income-producing activity and direct costs of performance as described in subsection A of § 58.1-416, as it was in effect for taxable years beginning before January 1, 2027.

Optional: Method A—Alternate Reasonable Apportionment for Defense Contractors

[OPTIONAL 2. In the case of a sale, other than the sale of tangible personal property, pursuant to a contract with the United States by a taxpayer that is a defense contractor as defined by 50 U.S.C. § 4552, where the location of the receipt of the benefit of the service cannot be determined under subsection A or B, using a reasonable amount of effort undertaken in good faith, the taxpayer shall estimate the dollar value or portion of such sale in the Commonwealth using the Commonwealth's share of the total population of the relevant geographical market.

OPTIONAL For all other taxpayers, if taxpayer cannot ascertain the state or states to which a sale are to be assigned pursuant to the provisions of subsection A, subsection B and subdivision D 1, using a reasonable amount of effort undertaken in good faith, the taxpayer shall estimate the dollar value or portion of such sale in the Commonwealth using the Commonwealth's share of the total population of the relevant geographical market.

Optional Throw-out Rule Replacement

3. The population used in subdivision D 2, shall be the U.S. population as determined by the most recent U.S. census data as of the beginning of the taxable year. If it can be substantiated by the taxpayer that the service is delivered to a location or intangible property is being materially used outside the U.S., then the populations of those other countries foreign jurisdictions or geographic areas where the service is being delivered or the intangible property is being materially used shall be added to the U.S. population.]

Optional Telecommunications Carve-Out

[OPTIONAL E. 1. Notwithstanding any other provision of this section, a taxpayer that is a "telecommunications company" as defined by § 58.1-400.1, may elect to assign a sales, other than sales of tangible personal property, under subdivision E 3 for taxable years beginning on or after January 1, 2027, but before January 1, 2033.

2. An election under this subsection shall be made on the taxpayer's return for the first taxable year for which the taxpayer is eligible for the election, and once made, an election under this

subsection cannot be changed for subsequent years without approval in writing by the Tax Commissioner.

3. Sales, other than sales of tangible personal property, are in the Commonwealth if:

a. The income-producing activity is performed in the Commonwealth; or

b. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.]

§ 58.1-422.4. Property information and analytics firms.

A. As used in this section:

"Authority" means the Virginia Economic Development Partnership Authority.

"Eligible city" means the City of Richmond.

"Memorandum of understanding" means a performance agreement or related document entered into by a property information and analytics firm and the Authority on or after December 1, 2021, but before August 1, 2022, that sets forth the requirements for capital investments and the creation of new full-time jobs by such property information and analytics firm.

"Property information and analytics firm" means an entity and its affiliated entities that as of January 1, 2022, is primarily a commercial real estate information and analytics firm with a location in an eligible city and that between January 1, 2022, and January 1, 2029, is expected to (i) make or cause to be made a capital investment in an eligible city of at least \$414.45 million and (ii) create at least 1,785 new jobs with average annual wages of at least \$85,000 per job.

B. 1. For taxable years beginning on or after January 1, 2022, but before January 1, 2029, a property information and analytics firm shall be subject to the provisions of subdivision B 2 of § 58.1-416 only if the Authority certifies to the Department that it has at least 1,000 full-time employees as of January 1, 2022, in an eligible city, subject to the terms and conditions of the memorandum of understanding.

2. For taxable years beginning on or after January 1, ~~2029~~2027, a property information and analytics firm shall be subject to the provisions of ~~subdivision B 2 of § 58.1-416~~ § 58.1-416, ~~only if the Authority certifies to the Department that it has at least 2,785 full-time employees as of January 1, 2029~~2027, in an eligible city, and from January 1, 2022, through December 31, ~~2028~~2026, has made or caused to be made a capital investment for its facilities in that eligible city of at least \$414.45 million. Once the Authority certifies a property information and analytics firm has met the job and capital investment requirements set forth in this subdivision, no additional certifications shall be required and the property information and analytics firm shall continue to be subject to the provisions of ~~subdivision B 2 of § 58.1-416~~ in all future taxable years.

C. The General Assembly finds that the growth of property information and analytics firms, including the capital investment and new jobs spurred by such growth, is essential to the continued fiscal health of the Commonwealth. Accordingly, the provisions of subsections A and B relating to capital investment and new jobs are integral to the purpose of this section. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be deemed severable.

§ 58.1-422.5. (Contingent effective date) Internet root infrastructure providers.

A. As used in this section:

"Authority" means the Virginia Economic Development Partnership Authority.

"Eligible planning district" means Planning District 8.

"Internet root infrastructure provider" means an entity and its affiliated entities that is designated to operate one or more of the 13 Internet root servers of the Internet Assigned Names Authority (IANA) root and functions as the authoritative directory for one or more Top-Level Domains.

This term does not include an Internet service provider, cable service provider, or similar company.

"Internet root server of the IANA root" means a Domain Name System server for one of the 13 root identities (A. - M.) that answers requests for the Domain Name System root zone of the Internet, redirecting requests for each Top-Level Domain to its respective nameservers.

"Memorandum of understanding" means a performance agreement or related document entered into by an Internet root infrastructure provider and the Authority on or after January 1, 2023, but before December 1, 2023, that sets forth the requirements for commitments to the Commonwealth.

B. 1. For taxable years beginning on or after January 1, 2023, but before January 1, 2030~~2027~~, an Internet root infrastructure provider shall be subject to the provisions of subdivision B 3 of § 58.1-416 only if the Authority certifies to the Department that the taxpayer has at least 550 full-time employees with an average annual salary of \$175,000 in an eligible planning district, has entered into a memorandum of understanding with the Authority, and has met the terms of such agreement.

2. For taxable years beginning on or after January 1, 2030~~2027~~, ~~if the Authority certifies to the Department that all requirements of the memorandum of understanding have been satisfied, no additional certifications shall be required, and the Internet root infrastructure provider shall continue to be subject to the provisions of subdivision B 3 of § 58.1-416~~ § 58.1-416 in future taxable years.

C. The General Assembly finds that the presence of the Internet root infrastructure provider industry is essential to the continued fiscal health of the Commonwealth. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be deemed severable.

2. This act shall be effective for taxable years beginning on and after January 1, 2027.

3. That the third enactments of Chapters 256 and 257 of the Acts of Assembly of 2022 are repealed effective for taxable years beginning on and after January 1, 2027.

4. That the Tax Commissioner shall develop guidelines implementing the provisions of this act. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). [OPTIONAL These guidelines shall include a secondary reasonable apportionment method based on population for defense contractors].

DRAFT

APPENDIX D: Workgroup Documents

2025 MARKET-BASED SOURCING WORKGROUP

August 6, 2025 | 2:30 PM

The James Center

901 East Cary Street, Suite 200

Richmond, VA, 23219

Facilitators: Cassandra Hamilton and Vickie Duffey

Agenda:

2:30 PM	Welcome & Introductions Ryan Cunningham, Lead Tax Law Analyst
2:40 PM	Virginia Tax Opening Remarks on Market-Based Sourcing in Virginia James J. Alex, State Tax Commissioner, Virginia Tax
2:50 PM	VEDP Opening Remarks on Market Based Sourcing in Virginia Meghan Welch, Vice President, Knowledge Work, VEDP
3:10 PM	Virginia Legislation on Market-Based Sourcing and History in Other States Ryan Cunningham, Lead Tax Law Analyst, Virginia Tax
3:30 PM	Comments, Questions, and Open Discussion Ryan Cunningham, Lead Tax Law Analyst
4:45 PM	Workgroup Roadmap Ryan Cunningham, Lead Tax Law Analyst
5:00 PM	Conclusion

2025 Market-Based Sourcing Working Group Meeting

August 6, 2025

- ▶ Welcome & Introduction
- ▶ Opening Remarks, James J. Alex
- ▶ VEDP Opening Remarks on Market-Based Sourcing in Virginia
- ▶ Virginia Legislation on Market-Based Sourcing and History in Other States
- ▶ Comments, Questions, and Open Discussion
- ▶ Workgroup Roadmap
- ▶ Conclusion

- ▶ James J. Alex,
State Tax Commissioner
- ▶ Kristin Collins,
Deputy Commissioner
- ▶ Charles Kennington,
Assistant Commissioner
- ▶ James Savage,
Tax Legislation Director
- ▶ Aisha Yededji,
Director of Economic Analysis
- ▶ Ryan Cunningham,
Income Tax Team Lead
- ▶ Matthew Style,
Principal Economist, Economic Analysis
- ▶ Austin Smith,
Income Tax Law Analyst
- ▶ Cassandra Hamilton,
Legislative Coordinator
- ▶ Vickie Duffey,
Administrative Coordinator

- ▶ Meghan Welch,
Vice President, Knowledge Work
- ▶ Sarah Brooks,
Director, Business and Financial Services
- ▶ Cole Pearce,
Manager, Economic Competitiveness

Opening Remarks

Tax Commissioner
James J. Alex

VEDP Remarks

Vice President, Knowledge Work
Meghan Welch



EVALUATING VIRGINIA'S TAX STRUCTURE TO COMPETE

August 6, 2025

65

VEDP

Virginia
Economic
Development
Partnership
VEDP.org

FY25-29 TRANSFORMATIONAL GOALS FOR THE COMMONWEALTH

1

Robust State Growth

Position Virginia to achieve a growth rate among that of the top 5-10 states in the U.S.

2

Every Region Wins

Ensure that every region participates in the growth of the Commonwealth

3

Best State for Business

Restore Virginia to its previous leadership position near the top of the national business climate rankings

4

Top State for Talent

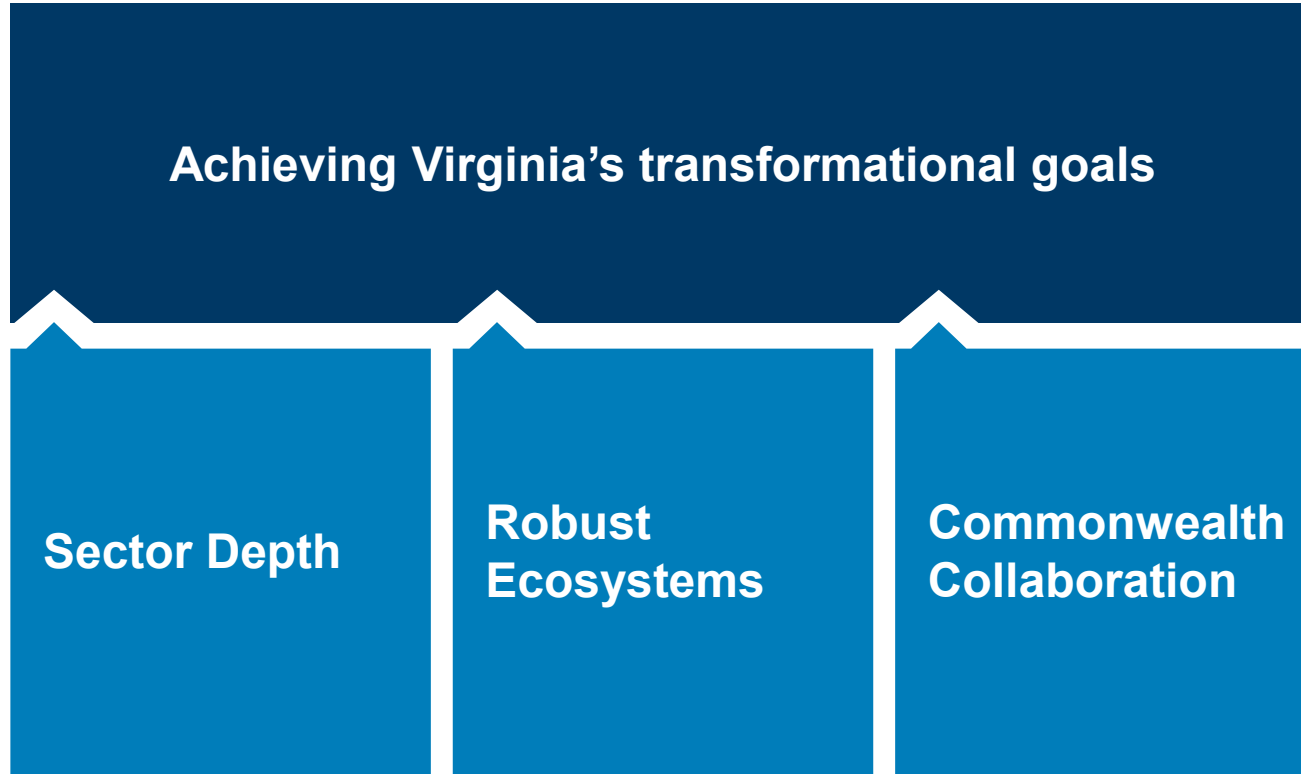
Establish Virginia as a top state for talent retention, attraction, development, and alignment

5

Most Innovative, Collaborative, and Effective State EDO

Solidify VEDP's position as one of America's top state EDOs through an innovative strategy, collaborative approach, and effective outcomes

AN INNOVATIVE FRAMEWORK TO DELIVER BETTER RESULTS



VIRGINIA'S GROWTH OPPORTUNITY: KNOWLEDGE WORK

Growth in the knowledge work sector (services and technology) presents VA's largest economic growth opportunity representing up to 41K Virginia jobs by 2030.

Virginia's cost-of-performance sales sourcing is a barrier to growth for some Knowledge Work companies:

- It provides a disincentive for service firms to locate the plurality of operations in Virginia
- It introduces the risk of double-taxation for service firms serving multiple states (taxed where services are generated, and where services are sold)
- It complicates accounting and tax filings for service sector firms with operations in multiple states

The Commonwealth's tax system should maximize its ability to compete.

SEVERAL KNOWLEDGE WORK FIRMS REQUIRED MARKET-BASED SOURCING TO RELOCATE OR EXPAND IN VIRGINIA



Financial Services

- Global leader in acquiring and collecting nonperforming loans, returns capital to banks and other creditors
- Norfolk, VA
- 300 jobs
- \$11M Capex
- 2019



Business Services

- Global leader in commercial real estate information, analytics, online marketplaces and 3D digital twin technology
- Richmond, VA
- 1,984 jobs
- \$461M Capex
- 2022



Software and Cybersecurity

- Global provider of domain name registry services and internet infrastructure, enables internet navigation for many of the world's most recognized domain names
- Reston, VA
- 550+ jobs maintained
- 2023

DETAILED CASE STUDY: COSTAR EXPANSION



- CoStar Group relocated its research function, and 732 jobs, from Washington D.C. to Richmond in October 2016
- In just over five years, CoStar grew to more than 1,000 employees becoming one of Richmond's largest employers
- In 2021, one of VEDP's Top 200 site selection consultants reached out to VEDP
- To compete with other states, Virginia had to both leverage its strengths and create a better business climate
- A whole-of-government effort put the framework in place to secure the R&D center and expansion, as well as corporate HQ

What made this approach different?

Investments to enhance Virginia's competitiveness

Virginia's existing corporate income tax structure was not competitive for the project. As an incentive for selecting Virginia, the Major Employment and Investment (MEI) Commission approved Market-based Sourcing tax apportionment for the property analytics company.

Coordination with partners to solve public infrastructure upgrades

CoStar will leverage up to \$15 million in public infrastructure upgrades to address commuter and pedestrian access, roadway and traffic improvements, safety, and off-site utility extensions around the new campus.

What was the result?

- CoStar Group invested \$460MM to build a two-building complex, which coupled with its existing building in downtown Richmond will create a corporate campus and welcome an additional 2,000 new jobs. The Innovation Campus will drive many of the latest research and development efforts for CoStar across approximately 1M SF in downtown Richmond.
- Since the December 2021 announcement, CoStar
 - Purchased a former SunTrust building across the river for \$20MM, home to 400 employees
 - Announced an \$18MM commitment to VCU for the construction of the CoStar Center for Arts and Innovation
 - Relocated its corporate HQ from Washington, D.C. to Arlington Co. representing 650 jobs and a \$20M capital investment



70



THANK YOU



Meghan Welch

Vice President, Knowledge Work
mwelch@vedp.org

Purpose and Legislative Mandate

The Governor's proposed amendments to the 2024 Appropriation Act (2025 HB 1600 /SB 800) included MBS enactment language

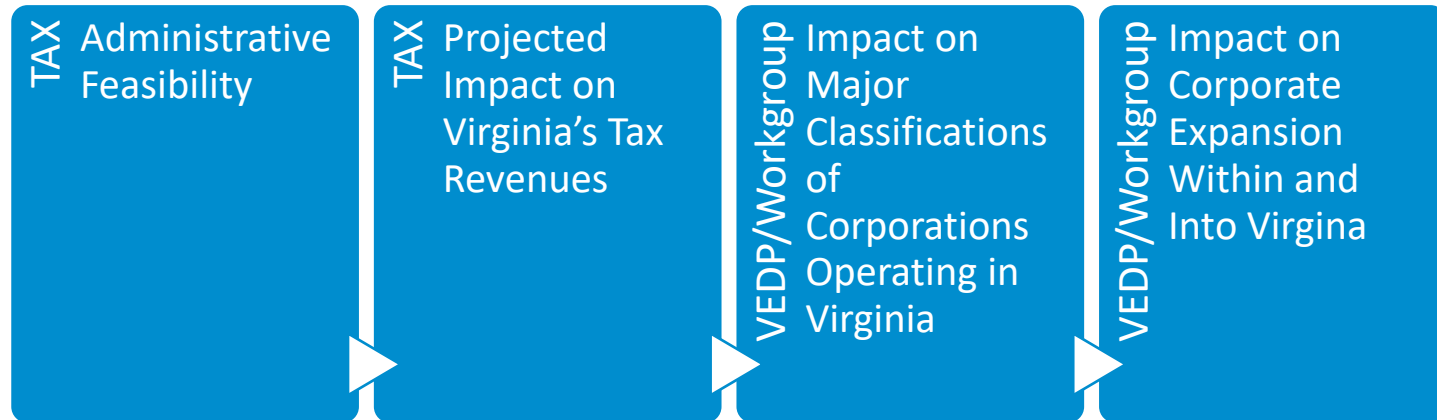
Enrolled & Re-enrolled versions of the budget changed MBS to study language

Bills proposing MBS in Virginia (HB 1866/SB 1456) died in committee

Re-enrolled budget is signed by the Governor & MBS becomes study

- ▶ Item 257(E) of the 2025 Appropriation Act requires the Department to:
 - ▶ Assess implementing market-based sourcing,
 - ▶ Present recommendations to the Joint Subcommittee on Tax Policy for evaluation of the fiscal implications and incorporate the Subcommittee's feedback in the report, and
 - ▶ Submit a final report with recommendations by November 15, 2025, to the Chairs of House Finance, House Appropriations, and Senate Finance and Appropriations Committees.

- ▶ The budget language requires the Department to form a workgroup of stakeholders with the Secretary of Finance and the Chairs of the Money Committees participating in selecting its members.
- ▶ The workgroup is asked to consider several aspects of potentially implementing MBS in Virginia, including:



“E. The Department of Taxation shall assess implementing market-based sourcing for sales in the corporate income apportionment formula. The Department shall assess the administrative feasibility, the impact on major classifications of corporations operating in Virginia, the impact on corporate expansion within and into Virginia, and the projected impact on Virginia's tax revenue as a result of adopting market-based sourcing. The Department shall present recommendations to the Joint Subcommittee on Tax Policy for evaluation of the fiscal implications and incorporate any feedback from the Joint Subcommittee prior to the submission of the final report. The Department may establish a work group of stakeholders with the Secretary of Finance and the Chairs of the House Finance, House Appropriations, and Senate Finance and Appropriations Committees participating in selecting its members. The Department shall submit a report with recommendations by November 15, 2025 to the Chairs of House Finance, House Appropriations, and Senate Finance and Appropriations Committees.”

- ▶ In Virginia, multi-state corporations are required to apportion a percentage of their income to Virginia based on a formula that includes the amount of their total payroll, property, and sales (double weighted) that are in Virginia.

This workgroup is not considering whether Virginia should:

- ▶ Adopt a new apportionment formula, such as a single-sales factor method of apportionment.
- ▶ Alter the weight of Virginia's current three factor apportionment formula.

This workgroup is considering whether Virginia should:

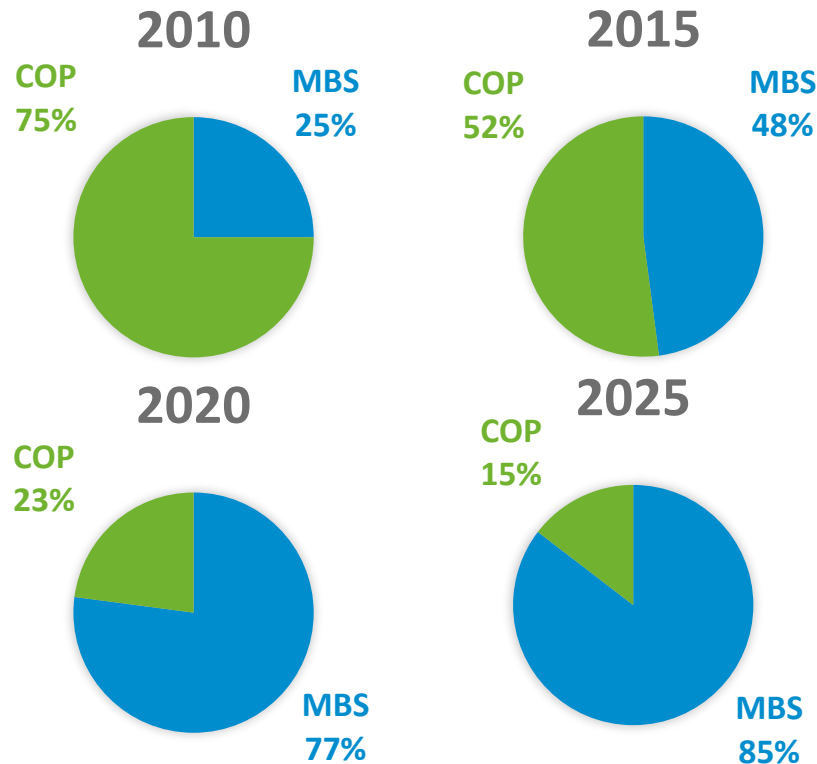
- ▶ Change how it determines whether non-tangible sales are “in Virginia” for the purposes of calculating the sales factor.

- ▶ Currently, sales of services and intangible personal property are considered to be in Virginia if more of the cost of performing the income-producing activity takes place in Virginia than in any other state—this is referred to as the cost-of-performance (“COP”) method.
- ▶ This workgroup is considering whether sales of services and intangible personal property should be considered to be in Virginia if the market for such sales is located in Virginia—this is referred to as market-based sourcing (“MBS”).

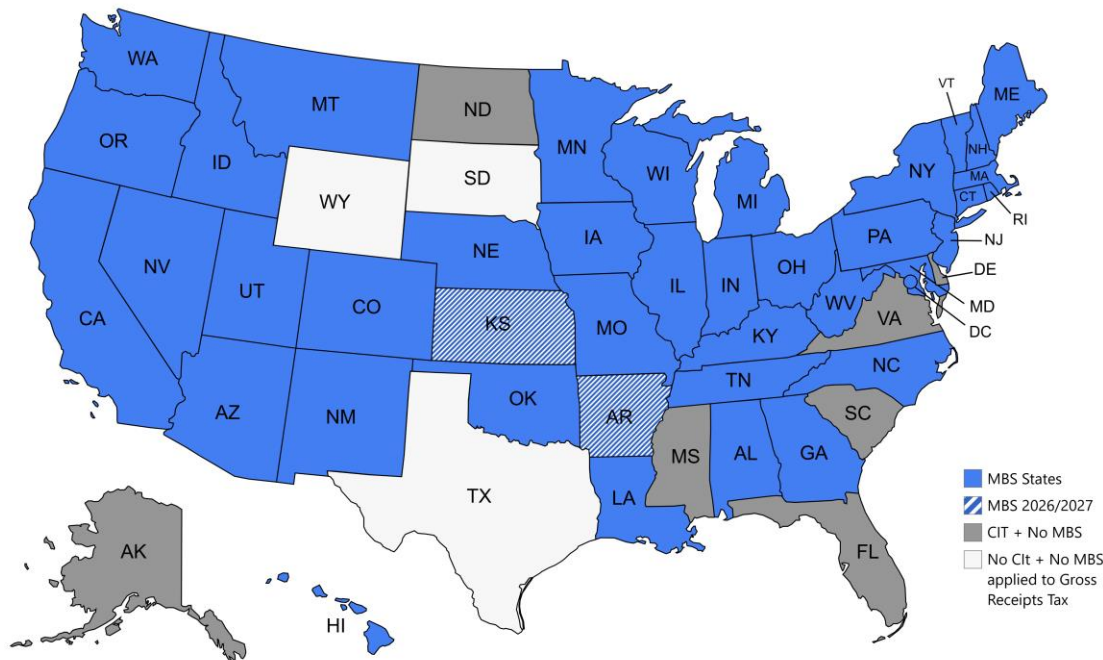
History and Growth of Market-Based Sourcing

Transition from COP to MBS to MTC

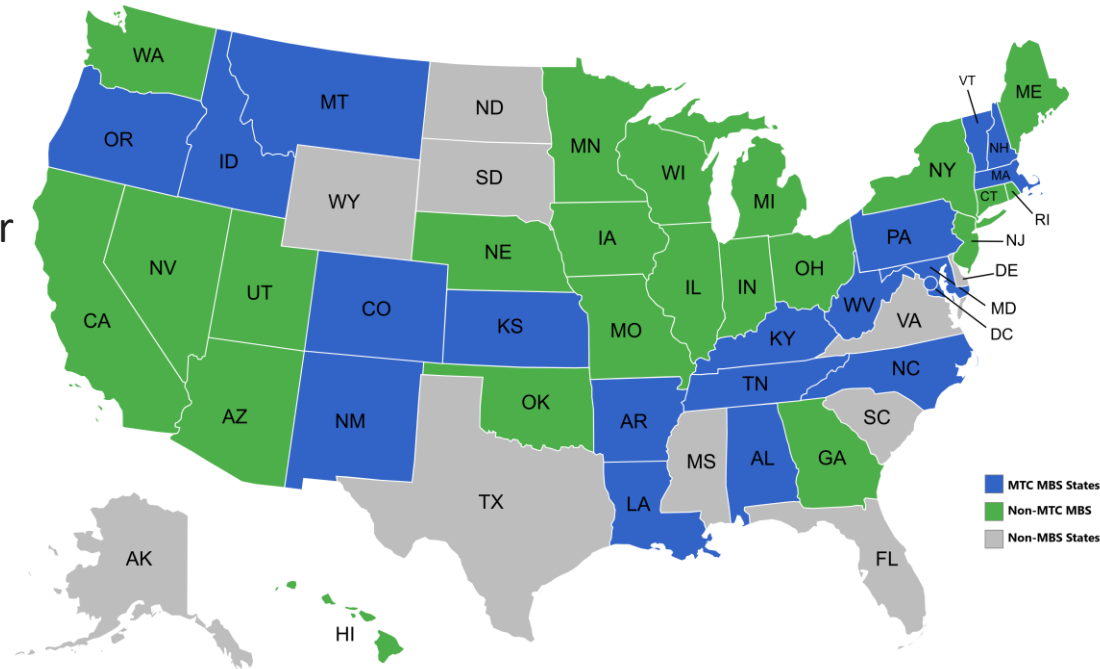
- ▶ Under the Uniform Division of Income for Tax Purposes Act developed in the 1950s, states sourced sales of services and intangibles using the COP method.
- ▶ In 2009, the Multistate Tax Commission (“MTC”) began a uniformity project to redraft the sourcing rules for services/intangibles.
- ▶ In 2015 the MTC adopted uniform MBS sourcing rules.



- ▶ A vast majority of states use MBS.
- ▶ MBS equalizes the treatment of non-tangible sales with the treatment of tangible sales for the purposes of calculating the sales factor.
- ▶ **41** jurisdictions with a corporate income tax or equivalent corporate-level tax have adopted MBS.
- ▶ Arkansas and Kansas have adopted MBS effective in 2026 and 2027, respectively.



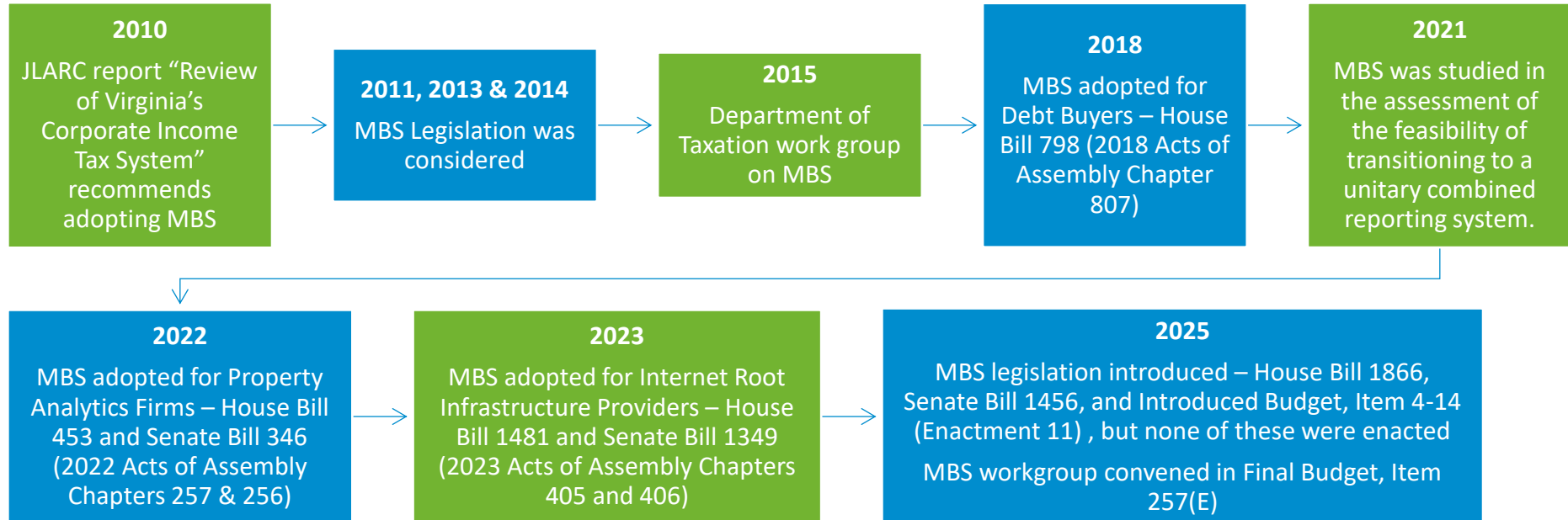
- ▶ About half (19 of 41) of MBS jurisdictions have adopted the MTC model rules promulgated in 2015.
- ▶ Many of the non-MTC jurisdictions adopted MBS prior to 2015
- ▶ Almost all of the jurisdictions adopting MBS after 2015 have used the MTC model.
- ▶ Every state bordering Virginia uses the MTC model.



History of Market-Based Sourcing in Virginia

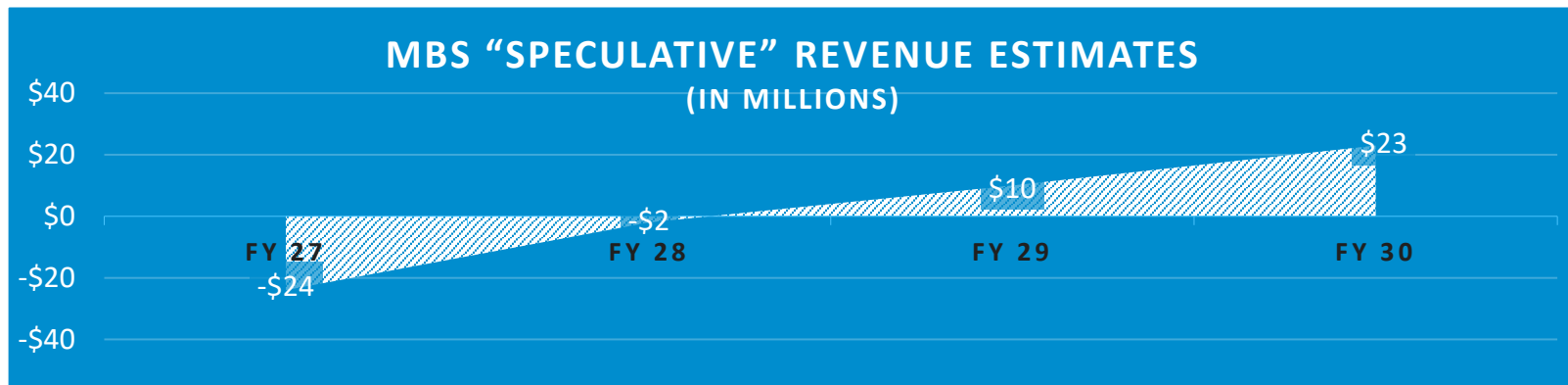
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Over the past decade and a half, Virginia has studied market-based sourcing and implemented market-based sourcing for certain industries.



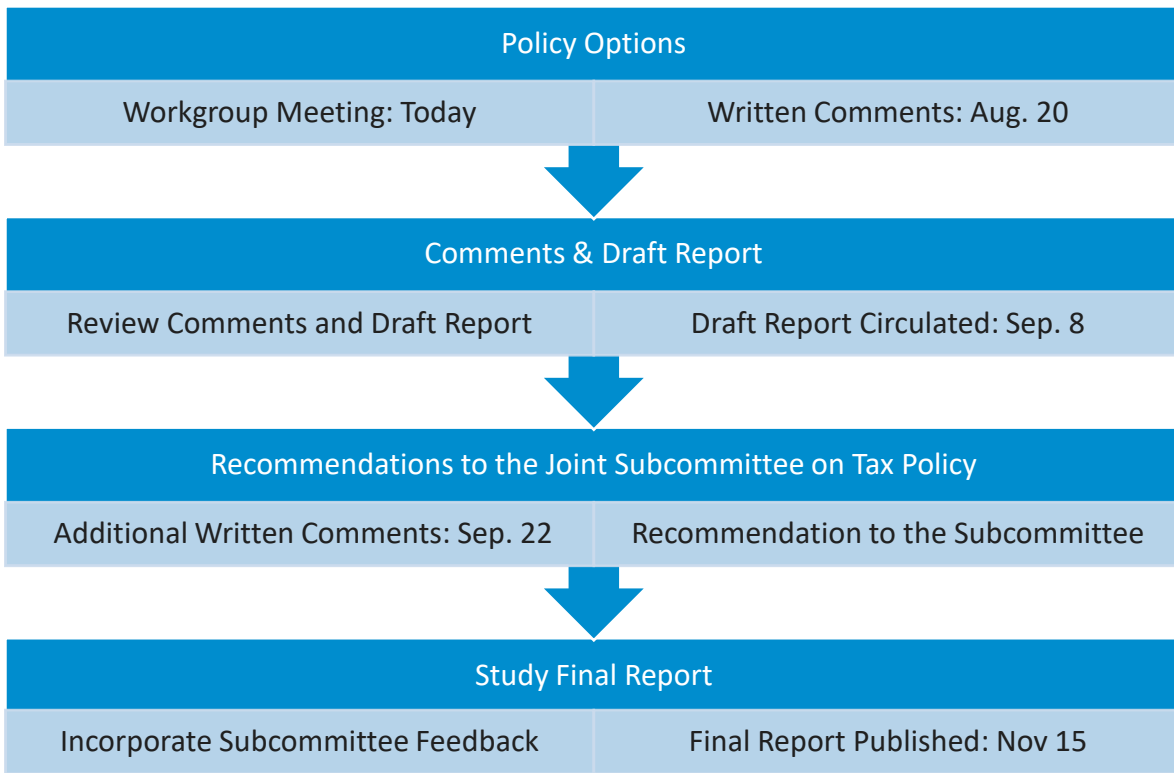
During the 2025 General Assembly the Department published a Fiscal Impact Statement for HB 1866 and SB 1456 which proposed implementing MBS in Virginia beginning in Taxable Year 2026.

- ▶ The revenue impact was determined to be “unknown” due to significant limitations in the availability of relevant data.
- ▶ However, based on data from the IRS Statistics of Income and other data, the Department was able to produce a speculative estimate that suggests this bill would have the following impact on revenues:



Open Forum

Questions and Comments



Presentation will be made available on the Virginia Tax webpage:

<https://www.tax.virginia.gov/>

Comments

- ▶ Please submit any comments you have regarding the report to the Department in writing by emailing such comments to: Austin.Smith@tax.virginia.gov
 - ▶ Initial comments on the workgroup discussion are due by **August 20th**
 - ▶ Written Comments on the Draft Report are due by **September 22th**

Reports

- ▶ Draft Report
 - ▶ Will be circulated on September 8th
- ▶ Final Report
 - ▶ Will be published by November 15th

- ▶ Ryan Cunningham, Income Tax Team Lead
 - ▶ Ryan.Cunningham@tax.virginia.gov
 - ▶ 804-371-0919

- ▶ Austin Smith, Income Tax Law Analyst
 - ▶ Austin.Smith@tax.virginia.gov
 - ▶ 804-371-5207

APPENDIX E: MTC Section 17



**Model General Allocation & Apportionment Regulations
as of July 25, 2018
(Examples Removed)ⁱ**

••• Reg. IV.17.(a). Receipts Factor: Sales Other Than Sales of Tangible Personal Property in This State: General Rules.

In general, Article IV.17. provides for the inclusion in the numerator of the receipts factor of gross receipts arising from transactions other than sales of tangible personal property.

(1) Market-Based Sourcing.

Receipts, other than receipts described in Article IV.16 (from sales of tangible personal property) are in [state] within the meaning of Article IV.17 and this Reg. IV.17 if and to the extent that the taxpayer's market for the sales is in [state]. In general, the provisions in this section establish uniform rules for (1) determining whether and to what extent the market for a sale other than the sale of tangible personal property is in [state], (2) reasonably approximating the state or states of assignment where the state or states cannot be determined, (3) excluding receipts from the sale of intangible property from the numerator and denominator of the receipts factor pursuant to Article IV.17(a)(4)(ii)(c), and (4) excluding receipts from the denominator of the receipts factor, pursuant to Article IV.17(c) where the state or states of assignment cannot be determined or reasonably approximated, or where the taxpayer is not taxable in the state to which the receipts are assigned as determined under Article IV.3 and applicable regulations,

(2) Outline of topics.

The provisions in this Reg. IV.17 are organized as follows:

ⁱ Prepared on August 1, 2025, by Virginia Tax's Tax Legislation Division. The MTC regulations are being explored as a potential option for consideration as part of the legislative study Virginia Tax is conducting pursuant to HB 1600. Virginia Tax does not have an official position on using the MTC regulations and prepared these for discussion purposes only."

- (a) General Rules
 - (1) Market-Based Sourcing
 - (2) Outline of Topics
 - (3) Definitions
 - (4) General Principles of Application; Contemporaneous Records
 - (5) Rules of Reasonable Approximation
 - (6) Rules with respect to Exclusion of Receipts from the Receipts Factor
 - (7) Changes in Methodology; [tax administrator] Review
 - (8) Further Guidance
- (b) Sale, Rental, Lease or License of Real Property
- (c) Rental, Lease or License of Tangible Personal Property
- (d) Sale of a Service
 - (1) General Rule
 - (2) In-Person Services
 - (3) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer
 - (4) Professional Services
- (e) License or Lease of Intangible Property
 - (1) General Rules
 - (2) License of a Marketing Intangible
 - (3) License of a Production Intangible
 - (4) License of a Mixed Intangible
 - (5) License of Intangible Property where Substance of the Transaction Resembles a Sale of Goods or Services
- (f) Sale of Intangible Property
 - (1) Assignment of Receipts
- (g) Special Rules
 - (1) Software Transactions
 - (2) Sales or Licenses of Digital Goods and Services

(3) Definitions.

For the purposes of this Reg. IV.17 these terms have the following meanings:

- (A) “Billing address” means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer’s account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

- (B) “Business customer” means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.
- (C) “Code” means the Internal Revenue Code as currently written and subsequently amended.
- (D) “Individual customer” means a customer that is not a business customer.
- (E) “Intangible property” generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and, except as otherwise provided in Reg. IV.17, computer software. Receipts from the sale of intangible property may be excluded from the numerator and denominator of the taxpayer’s receipts factor pursuant to Article IV.17 and [Reg. IV.17.\(f\).\(1\)\(D\)](#).
- (F) “Place of order,” means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.
- (G) “Population” means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.
- (H) “Related party” means:
 - (1) a stockholder who is an individual, or a member of the stockholder's family set forth in section 318 of the Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock;
 - (2) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock; or

(3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 per cent of the value of the corporation's outstanding stock. The attribution rules of the Code shall apply for purposes of determining whether the ownership requirements of this definition have been met. [or insert state definition]

- (I) “State where a contract of sale is principally managed by the customer,” means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

(4) General Principles of Application; Contemporaneous Records.

In order to satisfy the requirements of Reg. IV.17, a taxpayer’s assignment of receipts from sales of other than tangible personal property must be consistent with the following principles:

- (A) A taxpayer shall apply the rules set forth in Reg. IV.17 based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer’s books and records kept in the normal course of business. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the [Agency] upon request.
- (B) Reg. IV.17 provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

- (C) A taxpayer’s method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the regulatory standards set forth in Reg. IV.17, rather than an attempt to lower the taxpayer’s tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(5) Rules of Reasonable Approximation.

- (A) **In General.** In general, Reg. IV.17 establishes uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in [state]. The regulation also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation prescribed in Reg. IV.17. In other cases, the applicable rule in Reg. IV.17 permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in Reg. IV.17.
- (B) **Approximation Based Upon Known Sales.** In an instance where, applying the applicable rules set forth in [Reg. IV.17.\(d\)](#), (Sale of a Service), a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services (“assigned receipts”), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This rule also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services. *See* [Reg.s IV.17.\(e\).\(5\)](#) and [\(f\).\(1\)\(C\)](#).
- (C) **Related-Party Transactions – Information Imputed from Customer to Taxpayer.** Where a taxpayer has receipts subject to this Reg. IV.17 from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

(6) Rules with Respect to Exclusion of Receipts from the Receipts Factor

- (A) The receipts factor only includes those amounts defined as receipts under Article IV.1(g) and applicable regulations.
- (B) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to Article IV.17(a)(4)(ii)(C). *See* [Reg. IV.17.\(f\).\(1\)\(D\)](#).
- (C) In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to the applicable rules set forth in Reg. IV.17 (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV. 17.(c). and these regulations.
- (D) In a case in which a taxpayer can ascertain the state or states to which receipts from a sale are to be assigned pursuant to the applicable rules set forth in Reg. IV.17, but the taxpayer is not taxable in one or more of those states, pursuant to Article IV.3 and applicable regulations, the receipts that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV.17.(c).
- (E) Receipts of a taxpayer from hedging transactions, or from holding cash or securities, or from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities, shall be excluded pursuant to Article IV.1.(g) and Art. IV.17.

(7) Changes in Methodology; [tax administrator] Review

- (A) No Limitation on Article IV.18 or Reg. IV.18. Nothing in the regulations adopted here pursuant to Article IV.17 is intended to limit the application of Article IV.18 or the authority granted to [the tax administrator] under Section 18. To the extent that regulations adopted pursuant to Section 18 conflict with provisions of these regulations adopted pursuant to Section 17, the regulations adopted pursuant to Section 18 control. If the application of Section 17 or the regulations adopted pursuant thereto result in the attribution of receipts to the taxpayer's receipts factor that does not fairly represent the extent of the taxpayer's business activity in [state], the taxpayer may petition for or [the tax administrator] may require the use of a different method for attributing those receipts.
- (B) General Rules Applicable to Original Returns. In any case in which a taxpayer files an original return for a taxable year in which it properly assigns its receipts using a method of assignment, including a method of reasonable approximation,

in accordance with the rules stated in Reg. IV.17., the application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state or states of assignment to which the method is properly applied. In those cases, neither [the tax administrator] nor the taxpayer (through the form of an audit adjustment, amended return, abatement application or otherwise) may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year. However, [the tax administrator] and the taxpayer may each subsequently, through the applicable administrative process, correct factual errors or calculation errors with respect to the taxpayer's application of its filing methodology.

(C) [Tax Administrator] Authority to Adjust a Taxpayer's Return. The provisions contained in this Reg. IV.17.(a)(7)(C) are subject to Reg. IV. 17.(a)(7)(B). The [tax administrator's] ability to review and adjust a taxpayer's assignment of receipts on a return to more accurately assign receipts consistently with the rules or standards of Reg. IV.17, includes, but is not limited to, each of the following potential actions.

1. In a case in which a taxpayer fails to properly assign receipts from a sale in accordance with the rules set forth in Reg. IV.17, including the failure to properly apply a hierarchy of rules consistent with the principles of [Reg. IV.17.\(a\).\(4\)\(B\)](#), [the tax administrator] may adjust the assignment of the receipts in accordance with the applicable rules in Reg. IV.17.
2. In a case in which a taxpayer uses a method of approximation to assign its receipts and [the tax administrator] determines that the method of approximation employed by the taxpayer is not reasonable, the [tax administrator] may substitute a method of approximation that the [tax administrator] determines is appropriate or may exclude the receipts from the taxpayer's numerator and denominator, as appropriate.
3. In a case in which [the tax administrator] determines that a taxpayer's method of approximation is reasonable, but has not been applied in a consistent manner with respect to similar transactions or year to year, the [tax administrator] may require that the taxpayer apply its method of approximation in a consistent manner.
4. In a case in which a taxpayer excludes receipts from the denominator of its receipts factor on the theory that the assignment of the receipts cannot be reasonably approximated, the [tax administrator] may determine that the

exclusion of those receipts is not appropriate, and may instead substitute a method of approximation that the [tax administrator] determines is appropriate.

5. In a case in which a taxpayer fails to retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, or fails to provide those records to [the tax administrator] upon request, the [tax administrator] may treat the taxpayer's assignment of receipts as unsubstantiated, and may adjust the assignment of the receipts in a manner consistent with the applicable rules in Reg. IV.17.
6. In a case in which the [tax administrator] concludes that a customer's billing address was selected by the taxpayer for tax avoidance purposes, the [tax administrator] may adjust the assignment of receipts from sales to that customer in a manner consistent with the applicable rules in Reg. IV.17.

(D) Taxpayer Authority to Change a Method of Assignment on a Prospective Basis. A taxpayer that seeks to change its method of assigning its receipts under Reg. IV.17 must disclose, in the original return filed for the year of the change, the fact that it has made the change. If a taxpayer fails to adequately disclose the change, the [tax administrator] may disregard the taxpayer's change and substitute an assignment method that the [tax administrator] determines is appropriate.”.

(E)[Tax administrator] Authority to Change a Method of Assignment on a Prospective Basis. The [tax administrator] may direct a taxpayer to change its method of assigning its receipts in tax returns that have not yet been filed, including changing the taxpayer's method of approximation, if upon reviewing the taxpayer's filing methodology applied for a prior tax year, [the tax administrator] determines that the change is appropriate to reflect a more accurate assignment of the taxpayer's receipts within the meaning of Reg. IV.17, and determines that the change can be reasonably adopted by the taxpayer. [the tax administrator] will provide the taxpayer with a written explanation as to the reason for making the change. In a case in which a taxpayer fails to comply with [the tax administrator]'s direction on subsequently filed returns, [the tax administrator] may deem the taxpayer's method of assigning its receipts on those returns to be unreasonable, and may substitute an assignment method that the [tax administrator] determines is appropriate.

(8) Further Guidance.

The [tax administrator] may issue further public written statements with respect to the rules set forth in Reg. IV.17. These statements may, among other things, include guidance with respect to: (1) what constitutes a reasonable method of approximation

within the meaning of the rules, and (2) the circumstances in which a filing change with respect to a taxpayer's method of reasonable approximation will be deemed appropriate.

•• Reg. IV.17.(b). Sale, Rental, Lease or License of Real Property..

In the case of a sale, rental, lease or license of real property, the receipts from the sale are in [state] if and to the extent that the property is in [state].

•• Reg. IV.17.(c). Rental, Lease or License of Tangible Personal Property.

In the case of a rental, lease or license of tangible personal property, the receipts from the sale are in [state] if and to the extent that the property is in [state]. If property is mobile property that is located both within and without [state] during the period of the lease or other contract, the receipts assigned to [state] are the receipts from the contract period multiplied by the fraction computed under Reg. IV.10.(d). (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

•• Reg. IV.17.(d). Sale of a Service.

(1) General Rule.

The receipts from a sale of a service are in [state] if and to the extent that the service is delivered to a location in [state]. In general, the term “delivered to a location” refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth at [Reg.s IV.17.\(d\).\(2\)-\(4\)](#).

(2) In-Person Services.

(A) In General.

Except as otherwise provided in this Reg. IV.17.(d).(2), in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation,

warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing, x-rays and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer's real or tangible personal property. Various professional services, including legal, accounting, financial and consulting services, and other similar services as described in [Reg. IV.17.\(d\).\(4\)](#), although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this Reg. IV.17.(d).(2).

(B) Assignment of Receipts.

1. Rule of Determination. Except as otherwise provided in this [Reg. IV.17.\(d\).\(2\)\(B\)](#), if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in [state] if and to the extent the customer receives the in-person service in [state]. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows:
 - a. If the service is performed with respect to the body of an individual customer in [state] (e.g. hair cutting or x-ray services) or in the physical presence of the customer in [state] (e.g. live entertainment or athletic performances), the service is received in [state].
 - b. If the service is performed with respect to the customer's real estate in [state] or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in [state], the service is received in [state].
 - c. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside [state], the service is received in [state] if the property is shipped or delivered to the customer in [state].

(C) Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has

sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. If the state to which the receipts are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to the state are excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV.17.(c). and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

(3) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.

(A) In General.

If the service provided by the taxpayer is not an in-person service within the meaning of [Reg. IV.17.\(d\).\(2\)](#) or a professional service within the meaning of [Reg. IV.17\(d\)\(4\)](#), and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in [state] if and to the extent that the service is delivered in [state]. For purposes of this Reg. IV.17.(d).(3), a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience (see [Reg. IV.17.\(d\).\(3\)\(B\)1](#) and [Example \(iv\)](#) under (d).(3)(B)1.c.). A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(B) Assignment of Receipts.

The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this Reg. IV.17.(d).(3), a service delivered by an electronic transmission is not a delivery by a physical means). If a rule of assignment set forth in this Reg. IV.17.(d).(3), depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether

the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. If the state to which the receipts from a sale are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to that state are excluded from the denominator of the taxpayer's receipts factor. *See* Article IV.17(c) and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

1. **Delivery to or on Behalf of a Customer by Physical Means** Whether to an Individual or Business Customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation) where the taxpayer installs the custom software at the customer's site. The rules in this Reg. IV.17.(d).(3)(B)1. apply whether the taxpayer's customer is an individual customer or a business customer.
 - a. **Rule of Determination.** In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.
 - b. **Rule of Reasonable Approximation.** If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.
2. **Delivery to a Customer by Electronic Transmission.** Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules apply.

a. Services Delivered By Electronic Transmission to an Individual Customer.

- i. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in [state] if and to the extent that the taxpayer's customer receives the service in [state]. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.
- ii. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

b. Services Delivered By Electronic Transmission to a Business Customer.

- i. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in [state] if and to the extent that the taxpayer's customer receives the service in [state]. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this Reg. IV.17.(d.)(3)(B)2.b., it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.
- ii. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.
- iii. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this regulation. In these cases, unless the taxpayer can

apply the safe harbor set forth in [Reg. IV.17.\(d\).\(3\)\(B\)2.b.iv.](#), the taxpayer shall reasonably approximate the state or states in which the service is received as follows: first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address; provided, however, if the taxpayer derives more than 5% of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.

iv. Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate under [Reg. IV.17.\(d\).\(3\)\(B\)2.b.ii.](#), the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at [Reg. IV.17.\(d\).\(3\)\(B\)2.b.iii.](#), apply the safe harbor stated in this subsection. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether business or individual, and (2) does not derive more than 5% of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of [omitted reference] services delivered by electronic transmission to a business customer, and not otherwise.

v. Related Party Transactions. In the case of a sale of a service by electronic transmission to a business customer that is a related party, the taxpayer may not use the secondary rule of reasonable approximation in [Reg. IV.17.\(d\).\(3\)\(B\)2.b.iii](#) but may use the rule of reasonable approximation in [Reg. IV.17.\(d\).\(3\)\(B\)2.b.ii](#), and the safe harbor in [Reg. IV.17.\(d\).\(3\)\(B\)2.b.iv](#), provided that [the tax administrator] may aggregate sales to related parties in determining whether the sales exceed 5% of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.

3. Services Delivered Electronically Through or on Behalf of an Individual or Business Customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered

electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

- a. **Rule of Determination.** In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in [state] if and to the extent that the end users or other third-party recipients are in [state]. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in [state] to the extent that the audience for the advertising is in [state]. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in [state] to the extent that the end users or other third-party recipients receive the services in [state]. The rules in this subsection Reg. IV.17(d).(3)(B)3.a. apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.
- b. **Rule of Reasonable Approximation.** If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states.
- c. **Select Secondary Rules of Reasonable Approximation.**
 - i. If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly

to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.

- ii. If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients, if the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area.
- iii. When using the secondary reasonable approximation methods provided above, the relevant specific geographic area [of delivery] include only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.

(4) Professional Services.

(A) In General.

Except as otherwise provided in this Reg. IV.17.(d).(4), professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services,

consulting services, video production services, graphic and other design services, engineering services, and architectural services.

(B) Overlap with Other Categories of Services.

1. Certain services that fall within the definition of “professional services” set forth in this Reg. IV.17.(d).(4) are nevertheless treated as “in-person services” within the meaning of [Reg. IV.17.\(d\).\(2\)](#), and are assigned under the rules of that subsection. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the customer’s real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are “in-person services” and are assigned as such, notwithstanding that they may also be considered to be “professional services.” However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial and consulting services, are assigned as professional services under the rules of this Reg. IV.17(d)(4), notwithstanding the fact that these services may involve some amount of in-person contact.
2. Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment rules that apply are those set forth in this Reg. IV.17(d)(4), and not those set forth in [Reg. IV.17.\(d\).\(3\)](#), pertaining to services delivered to a customer or through or on behalf of a customer.

(C) Assignment of Receipts.

In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a

sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services. In any instance in which the taxpayer is not taxable in the state to which receipts from a sale is assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor. *See* Article IV.17(c) and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

1. General Rule. Receipts from sales of professional services other than those services described in [Reg. IV.17.\(d\).\(4\)\(C\)2](#). (architectural and engineering services), [Reg. IV.17.\(d\).\(4\)\(C\)3](#). (services provided by a financial institution) and [Reg. IV.17.\(d\).\(4\)\(C\)4](#). (transactions with related parties) are assigned in accordance with this Reg. IV.17.(d).(4)(C)1.
 - a. Professional Services Delivered to Individual Customers. Except as otherwise provided in Reg. IV.17(d)(4) (see in particular [Reg. IV.17.\(d\).\(4\)\(C\)4](#), in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this Reg. IV.17.(d).(4)(C)1.a. In particular, the taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.
 - b. Professional Services Delivered to Business Customers. Except as otherwise provided in Reg. IV.17.(d).(4), in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe harbor set forth at Reg. [IV.17.\(d\).\(4\)\(C\)1.c](#), the taxpayer shall assign the receipts from the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if the place of customer management is not reasonably determinable, to the customer's place of order; and third, if the customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its receipts from sales of all services from a customer, the taxpayer is required to

identify the state in which the contract of sale is principally managed by the customer.

- c. Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in [Reg. IV.17.\(d\).\(4\)\(C\)1.a.](#) and [b.](#), a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether individual or business, and (2) does not derive more than 5% of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of [Reg. IV.17.\(d\).\(4\)\(C\)1.](#) and not otherwise.
2. Architectural and Engineering Services with respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this Reg. IV.17.(d)(4). However, unlike in the case of the general rule that applies to professional services, (1) the receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and (2) the receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in Reg. IV.17(d)(4)(C)2, the receipts from a sale of these services must be assigned under the general rule for professional services. See [Reg. IV.17.\(d\).\(4\)\(C\)1.](#)
 3. Services Provided by a Financial Institution. The apportionment rules that apply to financial institutions are set forth at [financial institutions special apportionment statute or regulation]. [Drafter's Note: not all states have special industry rules or statutes for sourcing financial institution income.] That [financial institutions special apportionment statute or regulation] includes specific rules to determine a financial institution's receipts factor. However, [the statute or regulation] also provides that receipts from sales, other than sales of tangible personal property, including service transactions, that are not otherwise apportioned under [the statute or regulation], are to be assigned pursuant to Article IV.17. and these regulations. In any instance in which a financial institution performs services that are to be assigned pursuant to Article IV.17. and these regulations including, for example, financial custodial services, those

services are considered professional services within the meaning of this Reg. IV.17(d)(4), and are assigned according to the general rule for professional service transactions as set forth at [Reg. IV.17.\(d\).\(4\)\(C\)1.](#)

4. Related Party Transactions. In any instance in which the professional service is sold to a related party, rather than applying the rule for professional services delivered to business customers in [Reg. IV.17.\(d\).\(4\)\(C\)1.b.](#), the state or states to which the service is assigned is the place of receipt by the related party as reasonably approximated using the following hierarchy: (1) if the service primarily relates to specific operations or activities of a related party conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related party's payroll at the locations to which the service relates in the state or states; or (2) if the service does not relate primarily to operations or activities of a related party conducted in particular locations, but instead relates to the operations of the related party generally, then to the state or states in which the related party has employees, in proportion to the related party's payroll in those states. The taxpayer may use the safe harbor provided by [Reg. IV.17.\(d\).\(4\)\(C\)1.c](#) provided that [the tax administrator] may aggregate the receipts from sales to related parties in applying the 5% rule if necessary or appropriate to avoid distortion.

•• Reg. IV.17.(e). License or Lease of Intangible Property.

(1) General Rules.

- (A) The receipts from the license of intangible property are in [state] if and to the extent the intangible is used in [state]. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions are set forth at [Reg. IV.17.\(e\).\(2\)-\(5\).](#) For purposes of the rules set forth in this Reg. IV.17.(e)., a lease of intangible property is to be treated the same as a license of intangible property.
- (B) In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of Reg. IV.17. See [Reg. IV.17.\(f\).](#) Note, however, that for purposes of Reg.s IV.17.(e). and (f)., a sale or exchange of intangible property is treated as a license of that

property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use or disposition of the property.

- (C) Intangible property licensed as part of the sale or lease of tangible property is treated under Reg. IV.17 as the sale or lease of tangible property.
- (D) In any instance in which the taxpayer is not taxable in the state to which the receipts from the license of intangible property are assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor. *See* Article IV.17(c) and [Reg. IV.17.\(a\).\(6\)\(D\)](#).
- (E) Nothing in this Reg. IV.17.(e). shall be construed to allow or require inclusion of receipts in the receipts factor that are not included in the definition of "receipts" pursuant to Article IV.1.(g). or related regulations, or that are excluded from the numerator and the denominator of the receipts factor pursuant to Article IV.17.(a).(4)(ii)(C). For examples of the types of intangibles that are excluded pursuant to Article IV.1(g), see Reg. IV [insert cross-reference]. For examples of the types of intangibles that are excluded pursuant to Article IV.17.(a).(4)(ii)(C), see [Reg. IV.17.\(f\).\(1\)\(D\)](#). So, to the extent that the transfer of either a security, as defined in [cross-reference], or business "goodwill" or similar intangible value, including, without limitation, "going concern value" or "workforce in place," may be characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the numerator and the denominator of the taxpayer's receipts factor.

(2) License of a Marketing Intangible.

Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to [state] to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in [state]. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television or multimedia production or event for commercial distribution; and a franchise agreement. In each of these instances the license of the marketing intangible is intended to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to [state], it shall assign that amount or proportion to [state]. In the absence of actual evidence of the amount or proportion of the licensee's receipts

that are derived from [state] consumers, the portion of the licensing fee to be assigned to [state] must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the [state] population in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to [state] must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the [state] population in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible will be presumed to be derived from within the United States.

(3) License of a Production Intangible.

If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a “production intangible”), the licensing fees paid by the licensee for that right are assigned to [state] to the extent that the use for which the fees are paid takes place in [state]. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process. In the case of a license of a production intangible to a party other than a related party where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual). If the [tax administrator] can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in [state], it is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside [state]. In the case of a license of a production intangible to a related party, the taxpayer must assign the receipts to where the intangible property is actually used.

(4) License of a Mixed Intangible.

If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a “mixed intangible”) and the fees to be paid in each

instance are separately and reasonably stated in the licensing contract, the [tax administrator] will accept that separate statement for purposes of Reg. IV.17. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the [tax administrator] can reasonably establish otherwise.

(5) License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.

(A) In general.

In some cases, the license of intangible property will resemble the sale of an electronically-delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the rules set forth in [Reg. IV.17.\(d\).\(3\)\(B\)2](#) and [3](#), as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this Reg. IV.17.(e).(5) include, without limitation, the license of database access, the license of access to information, the license of digital goods (*see* [Reg. IV.17.\(g\).\(2\)](#)), and the license of certain software (*e.g.*, where the transaction is not the license of pre-written software that is treated as the sale of tangible personal property, *see* [Reg. IV.17.\(g\).\(1\)](#)).

(B) Sublicenses.

Pursuant to [Reg. IV.17.\(e\).\(5\)\(A\)](#), the rules of [Reg. IV.17.\(d\).\(3\)\(B\)3](#). may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth at [Reg. IV.17.\(d\).\(3\)\(B\)3](#). that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (*e.g.*, because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

••• Reg. IV.17.(f). Sale of Intangible Property.

(1) Assignment of Receipts.

The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this Reg. IV.17(f), a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of the property, *see* [Reg. IV.17.\(e\).\(1\)](#).

(A) Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area.

In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this state the taxpayer shall assign the receipts from the sale to [state]. If the intangible property is used or is authorized to be used in [state] and one or more other states, the taxpayer shall assign the receipts from the sale to [state] to the extent that the intangible property is used in or authorized for use in [state], through the means of a reasonable approximation.

(B) Sale that Resembles a License (Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property).

In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in [Reg. IV.17.\(e\)](#). (pertaining to the license or lease of intangible property).

(C) Sale that Resembles a Sale of Goods and Services.

In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale

or exchange do not derive from payments contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in [Reg. IV.17.\(e\).\(5\)](#) (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in [Reg. IV.17.\(e\).\(5\)](#).

(D) Excluded Receipts.

Receipts from the sale of intangible property are not included in the receipts factor in any case in which the sale does not give rise to receipts within the meaning of Article IV.1(g). In addition, in any case in which the sale of intangible property does result in receipts within the meaning of Article IV.1(g), those receipts are excluded from the numerator and the denominator of the taxpayer's receipts factor if the receipts are not referenced in Article IV.17(a)(4)(i), (ii)(A) or (ii)(B). *See* Article IV.17(a)(4)(ii)(C). The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's receipts factor under this provision includes, without limitation, the sale of a partnership interest, the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value. Also, in any instance in which, the state to which the receipts from a sale is to be assigned can be determined or reasonably approximated, but where the taxpayer is not taxable in such state, the receipts that would otherwise be assigned to such state shall be excluded from the numerator and denominator of the taxpayer's receipts factor. *See* [Reg. IV.17.\(a\).\(6\)\(D\)](#).

••• **Reg. IV.17.(g). Special Rules.**

(1) Software Transactions.

A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in [state] as determined under the rules for the sale of tangible personal property set forth under Article IV.16. and related regulations. In all other cases, the receipts from a license or sale of software are to be assigned to [state] as determined otherwise under Reg. IV.17. (e.g., depending on the facts, as the development and sale of custom software, *see* [Reg. IV.17.\(d\).\(3\)](#), as a license of a marketing intangible, *see* [Reg. IV.17.\(e\).\(2\)](#), as a license of a production intangible, *see* [Reg. IV.17.\(e\).\(3\)](#), as a license of intangible property where the substance of the transaction resembles a sale of goods or services, *see* [Reg. IV.17.\(e\).\(5\)](#), or as a sale of intangible property, *see* [Reg. IV.17.\(f\)](#)).

(2) Sales or Licenses of Digital Goods or Services.

(A) In general.

In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio and software products or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in [Reg. IV.17.\(d\).\(3\)\(B\)2.](#) or [3.](#), as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service. See [Regs IV.17.\(e\).\(5\)](#) and [\(f\).\(1\)\(C\).](#)

(B) Telecommunications Companies.

In the case of a taxpayer that provides telecommunications or ancillary services and that is thereby subject to Reg. IV.18(i), receipts from the sale or license of digital goods or services not otherwise assigned for apportionment purposes pursuant to that regulation are assigned pursuant to this Reg. IV.17(g)(2)(B), by applying the rules set forth in [Reg. IV.17.\(d\).\(3\)\(B\)2.](#) or [3.](#) as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. However, in applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased product it may reasonably approximate this location using the customer's place of "primary use" of the purchased product, applying the definition of "primary use" set forth in [MTC Model Regulation for Sourcing Sales of Telecommunications and Ancillary Services].

••• Reg. IV.17.(h). Mediation.

Whenever a taxpayer is subjected to different sourcing methodologies regarding intangibles or services, by the [State Tax Agency] and one or more other state taxing authorities, the taxpayer may petition for, and the [State Tax Agency] may participate in, and encourage the other state taxing authorities to participate in, non-binding mediation in accordance with the alternative dispute resolution rules promulgated by the Multistate Tax Commission from time to time, regardless of whether all the state taxing authorities are members of the Multistate Tax Compact.

APPENDIX F: The Senate Finance and Appropriations Committee Staff Requests

Thank you for the opportunity to provide comments for consideration by the Market-Based Sourcing (MBS) Workgroup. The Senate Finance and Appropriations Committee staff suggest the following:

- TAX should provide a fiscal impact for the possible implementation costs, especially with the ongoing upgrades to the department's revenue management system.
- In the past, the Commonwealth has used MBS as an economic development incentive, and the Work Group should consider the development of an implementation plan and possible legislative solutions to these standing agreements.
- It would be helpful to include additional information about the industry sector carve-outs adopted and apportionment changes made by other states when transitioning to MBS.
- Given the request by several sectors to have a carve-out from MBS, if it were to be adopted, TAX should develop revenue impacts for Industry sector-specific carve-outs or other changes to the Model General Allocation and Apportionment Regulations.
- In addition, JLARC staff should be consulted to review and comment on all MBS revenue estimates, any projected impact to economic development (including previous agreements), and any possible tax preferences for sector-specific carve-outs.

APPENDIX G: VEDP MBS Estimates

	Low Estimate	High Estimate
Tradable Service Sector Employment, MBS-Impacted	551988	551988
Anticipated Add'l Tradable Service Sector Employment Over 5 Years (%)	2%	3.5%
Anticipated Add'l Tradable Service Sector Employment Over 5 Years (#)	11040	19320
Adjustment to Per Year Impact	20%	20%
Est. Avg. Tradable Service Sector Employment Impact of MBS Adoption (annual, over five-year period*)	2208	3864
Avg. Direct to Total Jobs Multiplier for Service Sector Firms	2.02	2.02
Est. Avg. Total Employment Impact of MBS Adoption (annual, over five-year period*)	4460	7805

*The above employment impacts are net, and may be reflected through reduced job losses relative to what might be incurred under COP sourcing. Additionally, indirect and induced jobs may generated with a delay relative to direct tradable service sector employment increases.