Adapting 2020 Tax Expectations To COVID-19 Developments

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Much has changed since our 2020 tax forecast.[1] It is impossible to predict contingent events, which can dramatically change the course of history. The coronavirus crisis shall pass, although how long it will take is unknown, and there will be much pain, sorrow and dislocation.

Our country and the world will be addressing the fallout for years to come.

There is much uncertainty now. The immediate need is to find effective medical treatments, flatten the curve for the number of cases and stabilize the economy. As pandemic begins to recede, it will be necessary to have a plan in place to gradually reopen the U.S. for business without causing a resurgence of illness.

With so much uncertainty in mind, we venture to provide an update on key international, federal corporate, and state and local tax issues and trends, some of which were addressed in our 2020 Tax Forecast and some of which could not have been anticipated.

We recognize that there have been numerous other federal and state tax developments, including new tax laws and guidance arising as a result of the current pandemic, but we do not summarize them here.

Finally, before proceeding, we want to extend our thanks to doctors, nurses, other health care professionals, and everyone else who is on the front lines and at personal risk helping ill individuals and providing other essential services during this perilous time.

We also want to extend our appreciation to the employees of the Internal Revenue Service, the U.S. Department of the Treasury, and state and local tax administrators for their tireless efforts to administer our tax laws and implement relief measures designed to combat the effects of the virus.

International Tax

Tax Presence and Residency Issues

The significant health risks of COVID-19 and government responses to the pandemic, including stay at home orders and recommendations, have created a variety of tax presence issues for businesses in both the international tax and state tax contexts.

On April 21, following several other measures to reduce taxpayer compliance burdens during the pandemic, the Treasury and the IRS provided guidance on several of these issues in the international tax area.

For foreign businesses, questions may arise regarding whether displaced employees normally located in another jurisdiction and currently present in the U.S. may give rise to a U.S. trade or business for their employer or, where a tax treaty applies, a permanent establishment.

Although issues presented by mobile employees are not new, the unexpected and potentially prolonged nature of their stays may increase risks.

In the absence of a tax treaty, the U.S. trade or business standard applies. This standard considers whether the U.S. activities of a foreign enterprise, conducted either directly or through an agent, are "considerable, continuous and regular."

This is generally a lower threshold than the permanent establishment standard, and some of the principles potentially providing protection under the permanent establishment threshold, discussed below, may not apply.

On April 21, the IRS published frequently asked questions[2] addressing certain U.S. trade or business and permanent establishment issues. We acknowledge that the IRS' use of FAQs has been criticized but do not delve into that issue here.

With respect to U.S. trade or business, the answers state that a nonresident alien, foreign corporation or a partnership in which either is a partner may choose an uninterrupted period of up to 60 calendar days that begins between Feb. 1 and April 1 — the COVID-19 emergency period — during which services or other activities conducted in the U.S. will not be taken into account in determining whether the nonresident alien or foreign corporation is engaged in a U.S. trade or business, provided that such activities were performed by one or more individuals temporarily present in the U.S. and would not have been performed in the U.S. but for COVID-19 travel disruptions.

With respect to permanent establishment, the answers state that services or other activities performed by one or more individuals temporarily present in the U.S. will not be taken into account to determine whether the nonresident or foreign corporation has a permanent establishment, provided that the services or other activities of these individuals would not have occurred in the U.S. but for COVID-19 emergency travel disruptions.

In both situations, this last requirement — that the activities would not have otherwise occurred in the U.S. — should be noted and documented. In addition, as the FAQs state, protective return filings may be prudent to preserve the ability to claim deductions and other protections in the event that the IRS disagrees with the taxpayer's position.

Several other countries, including Australia, Ireland and the U.K., have also issued guidance addressing mobile employees and/or tax residence of individuals.

In addition, the Organization for Economic Cooperation and Development Secretariat issued an analysis addressing permanent establishment issues raised under tax treaties, concluding that "it is unlikely that the COVID-19 situation will create any changes to a [permanent establishment] determination," either as a result of a fixed place of business or a dependent agent regularly concluding contracts.

The OECD described several principles mentioned in the commentary to the OECD Model Convention, including that a fixed place of business should only arise where there is a certain degree of permanency and the location is "at the disposal" of an enterprise.

Similar tax presence issues arise with respect to individuals. A foreign individual will be treated as a resident of the U.S. with respect to any calendar year if such individual meets the "substantial presence test," i.e., is present in the U.S. on at least 31 days during the calendar year as well as 183 days during the current year and the two preceding years (counting 1/3 of the days in the preceding year and 1/6 of the days in the second preceding year).

Thus, in the absence of an exception, an individual staying in the U.S. for a prolonged period as a result of the pandemic, such as illness, the need to take care of an ill family member or fear of being exposed to the virus by traveling, could become a U.S. tax resident under the substantial presence test and, as a result, become subject to U.S. tax on worldwide income.

There is a medical condition exception to the substantial presence test that could be relevant to foreign individuals in the U.S. as a result of illness. Under this exception, an individual is not treated as being present in the U.S. on any day if such individual "was unable to leave the U.S. on such day because of a medical condition which arose while such individual was present in the U.S."

However, the regulations interpret the medical condition exception narrowly. The individual must have had an intent to leave the U.S. and be unable to leave because of a medical condition or problem that arose while the individual is present in the U.S.

It appears that, under the regulations, the relevant medical condition must be a medical condition of the individual, not a broader health and medical crisis.

On April 21, the Treasury and the IRS issued Revenue Procedure 2020-20,[3] which allows an individual to claim a COVID-19 medical condition travel exception for purposes of the substantial presence test.

The individual may claim the exception for a 60-day period starting between the dates of Feb. 1 and April 1, and, in that period, will be presumed to have intended to leave the U.S. and been unable to do so (unless the individual has taken steps to become a lawful permanent resident). Unless the individual is otherwise required to file a Form 1040-NR, no filing is required to claim this exception.

The 60-day period provided in the notice should be helpful for many potentially affected taxpayers. However, it remains to be seen how long the pandemic will have a significant impact on travel.

Revenue Procedure 2020-20 states that an eligible individual may claim the COVID-19 medical condition travel exception in addition to, or instead of, claiming other exceptions from the substantial presence test. Taxpayers may also need to consider other potential exceptions, such as the "closer connection" exception or a tiebreaker provision under a tax treaty.

Under the closer connection exception, a foreign individual who otherwise satisfies the substantial presence test but was physically present in the U.S. for less than 183 days in the current year is not treated as a U.S. resident.

The individual person must have both a tax home in a foreign country and a closer connection to such tax home. The closer connection exception must be claimed on a form attached to a Form 1040-NR.

If a foreign individual is physically present in the U.S. for more than 183 days, but is a citizen or resident of a country with which the U.S. has an income tax treaty, a treaty tiebreaker residency provision may apply to treat the individual as a resident of the other country, at least for purposes of avoiding federal income tax.

An individual treated as a resident of another country under a treaty is still treated as a U.S. resident for other purposes, such as determining whether a foreign corporation is classified as a controlled foreign corporation.

Also on April 21, the Treasury and the IRS issued Revenue Procedure 2020-27,[4] which waives certain days of presence requirements under Internal Revenue Code Section 911 (the foreign earned income exclusion) for an individual who reasonably expected to meet the eligibility requirements during 2019 or 2020 but is unable to do so because they departed a foreign country as a result of COVID-19.

Potentially impacted businesses and individuals should consider taking additional measures to support their reliance on the guidance. For example, both the FAQs and Revenue Procedure 2020-20 instruct taxpayers to retain all relevant records and contemporaneous documentation to support reliance on the revenue procedure. In addition, as mentioned above, in certain cases protective filings may be prudent.

Similar issues also arise in the state context, as is discussed below.

International Guidance Update

At the beginning of 2020, we looked forward to the continued development of the regulatory framework regarding the new international tax regime enacted in the 2017 Tax Cuts and Jobs Act. Although the Treasury and the IRS have prioritized providing guidance to relieve taxpayer burdens and limit economic damage as a result of the COVID-19 pandemic, work on TCJA-related guidance continues.

On April 7, the Treasury and the IRS issued final regulations addressing anti-hybrid rules under (1) Section 245A(e), denying a dividends-received deduction for any amount received by a U.S. shareholder from a controlled foreign corporation for which the controlled foreign corporation receives a deduction or other tax benefit for foreign income tax purposes; (2) Section 267A, generally disallowing a deduction for interest and royalty amounts paid or accrued in connection with certain related-party hybrid arrangements; and (3) Section 1503(d), the dual consolidated loss rules.

The final regulations maintain the general framework of the proposed regulations, with some important changes, including a general narrowing of the definition of interest under the Section 267A regulations.

The Treasury and the IRS also issued related proposed regulations under Section 245A(e), Section 881 (the anti-conduit regulations), and Section 951A (the global intangible low-taxed income provisions).

Final regulations related to several of the major TCJA international tax provisions are still likely to be released in 2020. These include final regulations and proposed regulations under Section 163(j) (limitations on interest deductions) and final regulations addressing foreign-derived intangible income.

Digital Tax

The OECD's technical work on the allocation of taxing rights between jurisdictions, including potential new allocations of nonroutine profits to market jurisdictions — Pillar One — and a potential new global minimum tax — Pillar Two, also referred to as the Global Anti-Base Erosion or GloBE proposal — is continuing, albeit remotely.

Although some have urged the OECD to slow or pause its work, the OECD Secretariat has stated that it is working full steam on the project, with all participants working towards "reaching a political decision on the key components of a multilateral consensus-based solution at the G20/OECD Inclusive Framework on BEPS plenary meeting scheduled for 1-2 July 2020 in Berlin, Germany."

In our 2020 forecast, we stated that a key question relating to the OECD's work would be whether and to what degree consensus can be reached and whether that consensus actually increases the stability of the international tax system by reflecting new consistent principles in countries's domestic laws or instead provides ideas or impetus for countries to engage in unilateral actions. That continues to be a key question.

Indeed, countries may now be more inclined to enact unilateral measures targeting the digital economy to offset the cost of virus relief and exploding deficits. At the same time, however, it is fair to question whether a global effort to increase taxes on multinationals makes sense in a time of economic turmoil and government stimulus efforts.

Federal Corporate Tax

As indicated above, as a result of the coronavirus crisis, the immediate focus of Treasury and IRS attention has shifted from addressing issues raised by the TCJA to implementing the tax relief provided by the bills enacted by Congress to combat the effects of the virus.

In particular, the Treasury and IRS will focus on providing technical guidance as needed to implement the new Coronavirus Aid, Relief and Economic Security, or CARES, Act, provisions, including the five-year carryback of net operating losses and relaxation of the Section 163(j) limitations on interest deductions.

In addition, the IRS is providing guidance on the procedures needed for taxpayers to obtain tax benefits, including filing refund claims and making elections.

A primary objective of the tax provisions of the CARES Act is to provide liquidity to businesses suffering from the economic fallout from the crisis. For example, allowing loss carrybacks provides refunds to taxpayers who were formerly profitable but now are unprofitable due to current economic conditions.

However, because of the potential interaction of a loss carryback deduction with other provisions of the Internal Revenue Code, a word of caution is necessary for taxpayers considering taking a loss carryback.

For example, a loss carryback to a prior year could have an unfavorable impact under the Section 951A GILTI provision or under the Section 59A Base Erosion and Anti-Abuse Tax, or BEAT, provision, or could affect utilization of foreign tax credits or transition tax under Section 965.

It is important for taxpayers considering taking a loss carryback deduction to model the effects of a loss carryback to determine the potential ramifications, and to understand the elections that are available and the procedures for making such elections.

After analysis of the potential consequences, in some situations taxpayers might prefer to waive a loss carryback deduction or a portion of it to the extent permitted.

Section 382 is another provision that affects the liquidity of troubled companies. Section 382 imposes limitations on the use of net operating loss carryovers after a corporation undergoes an ownership change — a more than 50% change in equity ownership.

If a corporation experiences an ownership change, the loss corporation thereafter has an annual limitation on the use of loss carryovers to offset post-change income in an amount computed by a formula — the equity value of the loss corporation multiplied by a long-term tax-exempt rate.

In the current environment in which stock values are depressed and interest rates are low (the long-term tax-exempt rate for May is 1.47%), if a corporation experiences an ownership change, the annual limitation will be low and will place a tight restriction on the use of loss carryovers in the future.

For this reason, some corporations are considering whether to institute net operating loss poison pills to deter potential acquirers from purchasing shares that could result in an ownership change.

A loss corporation might adopt a charter provision that prohibits persons or entities from becoming 5% shareholders and imposes potential forfeiture of shares if the 5% limit is exceeded.

Or, the board of directors might adopt a rights plan permitting existing shareholders to acquire additional shares at a discount if a person or entity becomes a 5% shareholder or increases its ownership percentage above 5%.

Under Section 382(h), there is a special rule that applies where, after an ownership change, a loss corporation sells a loss asset or takes deductions attributable to activity in the prechange period. There is a taxpayer-unfavorable rule treating the recognized loss or deductions like a prechange loss carryover.

There is also a special rule where, after an ownership change, a loss corporation sells a gain asset or has income attributable to activity in the prechange period. There is a taxpayer-favorable rule increasing the annual limitation.

Notice 2003-65 gave taxpayers a safe harbor election to use either of two methods to identify deductions or income attributable to prechange activity.

In September of last year, Treasury and the IRS issued proposed regulations under Section 382(h). These regulations are proposed to be effective when finalized.

The proposed regulations are intended to replace the rules in Notice 2003-65, eliminating the safe-harbor election and setting forth a single set of mandatory rules. The proposed regulations are controversial in a number of respects, particularly because they would eliminate a taxpayer-favorable rule in Notice 2003-65 about identifying income from prechange activity that is relied upon by numerous troubled corporations undergoing restructurings.

Troubled companies utilize the rule in the Notice 2003-65 to increase their post-change loss limitation, and thus preserve a significant portion of the value of their loss carryovers, the use of which assists in rehabilitation of the business.

The Treasury and the IRS have received lengthy comments about the proposed regulations. Especially in light of the current crisis and the desire to assist troubled companies to maintain liquidity, it is hoped that the Treasury and the IRS will retain, at least in some form, the favorable rule in Notice 2003-65 about identifying income from prechange activity.

State and Local Tax

COVID-19 Response

Here we address state tax considerations directly or indirectly arising out of responses to the coronavirus crisis. For businesses, the displacement of employees who continue to provide services — albeit from their homes rather than from the business's location — raises the specter of the business having a tax presence in jurisdictions where it previously lacked such presence.

This could be due to the employer being treated as doing business in the state or as having in-state contacts exceeding the protection of federal Public Law 86-272.[5]

There also can be other less extreme consequences, for example, changes to apportionment factors and payroll tax compliance requirements. Some states have provided official responses to these matters, and others are expected to do so.[6]

Also, the CARES Act discussion above addresses federal tax issues only. Many states do not adopt the Internal Revenue Code as most recently amended. Rather, they use a date-specific version of the code or adopt provisions as they believe appropriate. For these states, legislative action is likely to be required before CARES Act relief applies at the state level.

States' Changed Financial Outlook

In January, we expected to see (1) state extension of economic nexus thresholds to income taxes, (2) the expansion of sales taxes to cover new services and providers, (3) efforts by local jurisdictions to impose new taxes, new fees or both on the gig and sharing economies, and (4) efforts to tax new economy platforms as employers.

During the first months of 2020, the states acted as predicted.[7] However, the consequences of the response to the coronavirus pandemic abruptly changed the states' financial outlook from this story line:

> The overall results of the 2019 exercise relative to a year ago are unmistakably positive. State governments as a whole have never been more prepared for a downturn; 28 have enough cash on hand to weather a moderate recession without

> having to raise taxes or cut spending and 12 states are within striking distance, while only 10 are significantly unprepared.[8]

and

> Texas Comptroller Glenn Hegar announced today he will send cities, counties, transit systems and special purpose taxing districts $1.04 billion in local sales tax allocations for February, 9.4% more than in February 2019.[9]

To this story line:

> The severity of the impact of Coronavirus on Missourians cannot be overstated…The anticipated economic slump will have a drastic impact on the revenue the state relies on to carry out critical public services.[10]

and

> Nobody's got a map for this mess': Wisconsin counties brace for unknown hit to sales tax.[11]

We expect subnational tax jurisdictions to shift their immediate attention and resources from efforts to create new taxes on the gig and sharing economies to, instead, seeking greater amounts of taxes from all types of businesses from prior periods' activities.[12]

Seeking Greater Amounts of Taxes From Prior Periods

Taxpayers and tax practitioners widely believe that states act unfairly when they seek to increase the tax cost of completed activities. Such efforts may involve asserting sales or income tax presence where, on the same facts, none existed previously, recasting transactions to increase sales tax liabilities, and applying new apportionment criteria to increase income tax liabilities.

Considering the urgency of the states's revenue needs, during 2020 we expect taxpayers to encounter these approaches during audits by the states.

Asserting Sales or Income Tax Presence Where Such Assertions Were Not Made Previously

In the run-up to South Dakota v. Wayfair,[13] there was widespread concern that states would apply a change to the sales and use tax physical presence requirement retroactively.

With notable exceptions, after Wayfair states have resisted opportunities to assert tax collection responsibilities against remote businesses that previously made retail sales into the state.[14]

However, states may consider businesses that did not take advantage of post-Wayfair voluntary disclosure programs to be irresistible targets for more aggressive audits. These businesses are vulnerable due to the revenue opportunity that they present and because, as out-of-state businesses, they are comprised of noncitizens/nonvoters with limited ability to enlist political pressure in their defense.

Nevertheless, depending on their facts, remote businesses may have reasonable defenses against such findings of nexus.

State revenue departments also might seek revenue by asserting income tax presence in prior periods against businesses selling other than tangible personal property. During 2020 we expect to see states apply market-based apportionment rules[15] to boot-strap findings of economic presence.

It will take little for state revenue departments to justify applying this approach to earlier periods. However, there is significant doubt as to the legality of applying apportionment rules to nexus determinations.

Recasting Transactions to Increase Sales Tax Liabilities

Retailers often conclude that allowing marketing and sales personnel the unfettered ability to grow the business is more important than attempting to avoid tax presence. Therefore, these businesses make multistate sales and collect required sales taxes.

Unavoidably, there can be uncertainty in determining the amount of sales taxes due. For example, does the item sold qualify as a medical device? This is important, as medical devices may be exempt from sales tax or may be taxed at lower rates than nonmedical devices.

As another example, does the item sold qualify as groceries or as a prepared food? This is important, as groceries may be taxed at a lower rate than prepared foods.

As a third example, is the taxpayer selling goods or a service? This is important because sales of services might be nontaxable even if they involve the transfer of tangible personal property.

Significantly, simply collecting the greatest conceivable amount of sales tax can be bad business while also exposing the retailer to class action lawsuits by consumers claiming that they were charged excessive tax.

In contrast, collecting less than the required amount of sales tax exposes a business to liability for the tax shortfall and to False Claims Act lawsuits in states where that is permitted. In sum, there are significant forces pushing retailers to collect the correct amount of sales tax.

However, unlike retailers, states are not required to make real-time determinations as to the correct amount of taxes to collect. Nor are states subject to consumer class action lawsuits if they over-collect taxes. State auditors are, thus, well-positioned to question retailers's categorizations of their sales.

Retailers, therefore, rely upon the states's good faith in evaluating the taxability of their prior periods' sales. Unfortunately, with the expected dramatic reduction in tax collections, state auditors may feel a need to be more aggressive in pushing transactions into a higher tax characterization. For retailers, this can lead to exposures for allegedly under-collected sales taxes.

Applying New Apportionment Formulae to Increase Income Tax Liabilities

State revenue departments were experimenting with alternative apportionment formulae even without the now-anticipated collapse in tax receipts. We are aware of a circumstance in which a state changed a business's long-used apportionment formula and applied a new formula that increased the amount of income apportioned to the state by more than 6,000%. And this was before the response to coronavirus shuttered businesses and shattered expected collections.

Therefore, with business income and profits in 2020 likely to be significantly reduced from beginning-of-the-year expectations, and with prior periods providing a known source of taxable income, state incentives for using audits to modify apportionment methodologies are greater than ever.

Moreover, market-sourcing principles are still being developed, which provides state auditors with opportunities and ample justification for shaping apportionment criteria so as to increase taxes due. As a consequence, businesses may experience significant proposed increases in their apportionment percentages in their state income tax audits.

What Businesses Should Do

For prior periods, businesses have limited ability to prevent states from asserting novel theories of tax presence, transaction characterization and apportionment. Therefore, business tax department personnel must react quickly to possible challenges by state auditors.

Also, responses to nexus questionnaires must be carefully considered. Likewise, for at least the remainder of 2020, when state audits take an unexpected turn, tax counsel should be engaged without delay.

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[1] "2020 Tax Forecast," available at https://www.steptoe.com/en/news-publications/2020-tax-forecast.html.

[2] "Information for nonresident aliens and foreign businesses impacted by COVID-19 travel disruptions," available at https://www.irs.gov/newsroom/information-for-nonresident-aliens-and-foreign-businesses-impacted-by-covid-19-travel-disruptions.

[3] Available at https://www.irs.gov/pub/irs-drop/rp-20-20.pdf.

[4] Available at https://www.irs.gov/pub/irs-drop/rp-20-27.pdf.

[5] Public Law 86-272. This federal law allows businesses to have employees in a state without being subject to the state's income tax, as long as the employees do no more than solicit the sale of tangible personal property. With the sudden displacement of employees, there is a significantly increased likelihood of services other than solicitation being performed in a state where the business otherwise would be protected from the state's income tax.

[6] For example, the New Jersey Division of Taxation's Internet site advises that "As a result of COVID-19 causing people to work from home as a matter of public health, safety, and welfare, the Division will temporarily waive the impact of the legal threshold within N.J.S.A. 54:10A-2 and N.J.A.C. 18:7-1.9(a) which treats the presence of employees working from their homes in New Jersey as sufficient nexus for out-of-state corporations. In the event that employees are working from home solely as a result of closures due to the coronavirus outbreak and/or the employer's social distancing policy, no threshold will be considered to have been met." (Accessed April 13, 2020.) We encourage readers view two client alerts in which we addressed these and other COVID-19 related issues: "Businesses: COVID-19 and Subnational Taxes: Some Relief … and Two Reminders" available at https://www.steptoe.com/en/news-publications/businesses-covid-19-and-subnational-taxes-some-reliefand-two-reminders.html and "Personal Income Taxes and COVID-19: A Caution" available at https://www.steptoe.com/en/news-publications/personal-income-taxes-and-covid-19-a-caution.html. Also see our March 25 headline news webinar available at https://www.steptoe.com/en/events/state-and-local-taxation-headline-news-and-trends-expanded-edition.html.

[7] For example, in December 2019, the city of Phoenix enacted an ordinance increasing certain ridesharing fees. On Jan. 7, the city of Phoenix wrote to Arizona's attorney general and deputy solicitor general requesting confirmation that the ordinance legally increased

those fees. The attorney general disagreed, and the matter reached the Arizona Supreme Court. On April 2, the Arizona Supreme Court agreed with the city of Phoenix. State of Arizona v. City of Phoenix, No. CV-20-0019-SA. And on March 18, Maryland's legislature approved a bill imposing a new tax on digital advertising, which is now being considered by the state's governor. MD H.B. 0732. Likewise, both New York state and Nebraska are considering proposals to tax digital advertising. For our thoughts on digital advertising taxes, see "Supreme Court Strengthens Arguments That Federal Law Protects Electronic Commerce From Discriminatory State Taxes," (March 3, 2020) (available here: https://www.steptoe.com/en/news-publications/supreme-court-strengthens-arguments-that-federal-law-protects-electronic-commerce-from-discriminatory-state-taxes.html).

[8] Stress-Testing States 2019, Moody's Analytics (October 2019).

[9] Press Release, Texas Comptroller of Public Accounts (Feb. 12, 2020).

[10]The Crisis We Face, Missouri Budget Project (March 2020).

[11] Wisconsin State Journal (April 6, 2020).

[12] To be clear, we expect the states to slow their efforts to impose new taxes on the gig and sharing economies, but not to abandon those efforts. When activity in these sectors of the economy recovers, the states' efforts to enact taxes better suited to these sectors likewise will return.

[13] South Dakota v. Wayfair, 585 U.S. __ (2018).

[14] As has been widely reported, California's application of its marketplace seller treatment going back several years has resulted in large alleged unpaid sales tax bills for some small vendors. See Rev. & Tax. Code Section 6487.07 and California Department of Tax and Fee Administration Special Notice "Marketplace Sellers May Be Affected by New Marketplace Facilitator Act Beginning October 1, 2019" (Aug. 2019).

[15] Under the Uniform Division of Income for Tax Purposes Act, states have traditionally apportioned receipts derived from sales of other tangible personal property under a "cost of performance" test that generally sourced the receipts to the state in which the vendor was

located. More recently, many states have shifted to one of several forms of market sourcing for such sales — which looks to where the customer is located (or to where the benefit of the sale is received).