

## Uniform Division of Income for Tax Purposes Act

### Background

UDITPA was drafted in 1957 by the Uniform Law Commission (ULC), formerly The National Conference of Commissioners on Uniform State Laws (NCCUSL).

- The ULC commissioners study and review states' laws, then draft and propose specific statutes in areas of the law where uniformity between the states is desirable.
- The ULC can only propose—no uniform law is effective until a state legislature adopts it.
- Other examples of such uniform laws: the Universal Commercial Code; the Unclaimed Property Act; the Limited Partnership Act.

### UDITPA and Apportionment

UDITPA was adopted in 1965 as Chapter 57-38.1 of the North Dakota Century Code (N.D.C.C.). For entities that do business in more than one state, it provides a uniform method of dividing income between states. The goal is that a business is not taxed more than once on its income. The process meant to achieve this goal is *apportionment*. For North Dakota, standard apportionment:

- Applies only to multistate entities.
- Is based on a "formulary" method using a business' property, payroll and sales.

North Dakota calculates the North Dakota apportionment factor using these steps:

1. Property owned or leased in ND / Property owned or leased Everywhere = ND Property Factor
2. Payroll of employees in ND / Payroll of employees Everywhere = ND Payroll Factor
3. Sales delivered to ND / Sales delivered Everywhere = ND Sales Factor
4. (ND Property Factor + ND Payroll Factor + ND Sales Factor) / 3 = North Dakota Apportionment Factor

The multistate business' income is multiplied by the North Dakota apportionment factor to determine how much of that income is taxable in North Dakota. The appropriate tax rate is then applied to determine the business' North Dakota income tax liability.

### UDITPA and Special Rules

North Dakota adopted the Multistate Tax Compact in 1969 as N.D.C.C. Chapter 57-59. This Chapter allows for the development of special rules for industries whose business activity is not accurately apportioned under the standard apportionment formula. States chose whether to adopt special rules, either by statute or regulation. At present, North Dakota has adopted special apportionment regulations for the following industries:

- Railroads – N.D. Admin. Code § 81-03-09-35
- Airlines – N.D. Admin Code § 81-03-09-36
- Trucking Companies – N.D. Admin Code § 81-03-09-37
- Television and Radio Broadcasting– N.D. Admin Code § 81-03-09-38
- Publishing– N.D. Admin Code § 81-03-09-39

## **North Dakota's Special Rule for Trucking Companies**

North Dakota adopted the MTC model regulation for trucking companies in 1987. The rule applies only to common carriers that transport goods for others. The reason for the special rule is to properly reflect the mobile nature of trucking companies' activity in and through states, versus other businesses where their property has a fixed location. To do so, the rule uses the concept of "mobile property miles", which essentially equates to the number of miles driven in each state the company passes through.

Under the special rule, the only difference in the factor is the computation of the numerator. The apportionment factor denominators would remain the same as under the standard apportionment factor. As with the standard formula, the factor numerator includes: 1) any property that does not leave ND, 2) any payroll for employees that do not leave ND, and 3) any ND intrastate sales. Additionally, the apportionment factor numerator includes a portion of the activity related to mobile property. For example, the cost of trucks and other mobile property that travel from state to state is assigned to ND based on a Mobile Property ratio calculated as:

$$\frac{\text{Total Cost of Mobile Property} \times \text{ND Mobile Property Miles}}{\text{Everywhere Property Miles}}$$

The same ND Mobile Property ratio is applied to the payroll of employees who perform work both within and without ND, and to sales resulting from shipments passing through/into/out of ND.

### **Exception to Application of North Dakota's Special Trucking Company Rule**

North Dakota does include a "de minimis" standard in the trucking regulation. Trucking companies operating in ND are exempt from the regulation if they meet all four of these criteria:

- The only property they have in ND is mobile property, and
- They do not make any pickups or deliveries in ND, and
- They do not travel more than 25,000 property miles in ND (provided that total mobile property miles traveled in ND are not more than 3% of all mobile property miles traveled in all states), and
- The company makes no more than 12 trips per year into ND.

### **UPITPA and Sales Other than Sales of Tangible Personal Property**

N.D.C.C. § 57-38.1-17 states: " Sales, other than sales of tangible personal property, are in this state if:

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

**North Dakota Apportionment Factor – Non-Trucking Business**

Income to be apportioned = \$2,000,000

	(A)	(B)	Factors (A / B)
ND Property =	\$ 1,250,000	Everywhere Property = \$2,000,000	.625000
ND Payroll =	\$ 750,000	Everywhere Payroll = \$1,000,000	.750000
ND Sales =	\$ 2,000,000	Everywhere Sales = \$4,000,000	.500000
		Sum of Factors	1.875000
		ND Apportionment Factor = Sum of Factors / 3	.625000

**ND Taxable Income:** \$2,000,000 (Income to be Apportioned) X .625000 (ND Factor) = \$1,250,000

**North Dakota Apportionment Factor –Trucking Business**

Income to be apportioned = \$2,000,000

ND Property	\$ 625,000	Everywhere Property	\$ 1,000,000
ND Mobile Property	\$ 625,000	Everywhere Mobile Property	\$ 1,000,000
Total ND Property	\$1,250,000	Total Everywhere Property	\$ 2,000,000
ND Payroll	\$ 375,000	Everywhere Payroll	\$ 250,000
ND Mobile Payroll	\$ 375,000	Everywhere Mobile Payroll	\$ 750,000
Total ND Payroll	\$ 750,000	Total Everywhere Payroll	\$ 1,000,000
ND Intrastate Sales	\$ 1,000,000	Everywhere Intrastate Sales	\$ 1,500,000
ND Mobile Sales	\$ 1,000,000	Everywhere Mobile Sales	\$ 2,500,000
Total ND Sales	\$ 2,000,000	Total Everywhere Sales	\$ 4,000,000
ND Mobile Property Miles – 500,000		Everywhere Mobile Property Miles – 1,500,000	
		ND Mobile Property Ratio = 500,000 / 1,500,000 = .333333	

**ND Mobile Property, Payroll & Sales:**

\$ 625,000 (Mobile Property) X .333333 = \$ 208,333 ND Mobile Property  
 \$ 375,000 (Payroll / Mobile Employees) X .333333 = \$ 125,000 ND Mobile Payroll  
 \$ 1,000,000 (Sales through/out of ND) X .333333 = \$ 333,333 ND Mobile Sales

**Factor Computation:**

ND Property Factor: (\$ 625,000 + \$ 208,333) = \$ 833,333 / \$ 2,000,000 = .416666  
 ND Payroll Factor: (\$ 375,000 + \$ 125,000) = \$ 500,000 / \$ 1,000,000 = .500000  
 ND Sales Factor: (\$ 1,000,000+\$ 333,333) = \$ 1,333,333 / \$ 4,000,000 = .333333

**ND Apportionment Factor:**

.416666 (Property Factor) + .500000 (Payroll Factor) + .333333 (Sales Factor) = 1.249999 / 3 = .416666

**ND Taxable Income:** \$2,000,000 (Income to be Apportioned) X .416666 (ND Factor) = \$ 833,332

state weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any nonflight revenues directly attributable to this state.

3. **Records.** The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. Such records are to be subject to review by the respective state taxing authorities or their agents.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.1-01, 57-38.1-02, 57-38.1-09, 57-38.1-10, 57-38.1-11,

**81-03-09-37. Special rules - Trucking companies.** The following special rules are established with respect to trucking companies:

1. **In general.** As used in this section, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this section. In such cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness under North Dakota Century Code section 57-38.1-01 and article IV(1) of North Dakota Century Code section 57-59-01 and section 81-03-09-03. Nonbusiness income is directly allocable to specific states pursuant to the provisions of North Dakota Century Code sections 57-38.1-05 through 57-38.1-08 and article IV(5) through IV(8) of North Dakota Century Code section 57-59-01. Business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this section. The sum of the items of nonbusiness income directly allocated to this state plus the amount of business income attributable to the state constitutes the amount of the taxpayer's entire net income which is subject to taxing in this state.
2. **Business and nonbusiness income.** For definitions, rules, and examples for determining business and nonbusiness income, see sections 81-03-09-03 through 81-03-09-06.
3. **Apportionment of business income.**
  - a. In general. The property factor must be determined in accordance with sections 81-03-09-15 through 81-03-09-21, the payroll factor in accordance with sections 81-03-09-22 through 81-03-09-25, and

the sales factor in accordance with sections 81-03-09-26 through 81-03-09-31, except as modified by this section.

- (1) Property valuation. Owned property must be valued at its original cost and property rented from others must be valued at eight times the net annual rental rate in accordance with North Dakota Century Code section 57-38.1-11 and article IV(11) of North Dakota Century Code section 57-59-01 and sections 81-03-09-19 and 81-03-09-20.
- (2) General definitions. The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:
  - (a) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the tax commissioner may require the averaging of monthly values during the income year or such averaging as is necessary to reflect properly the average value of the trucking company's property, in accordance with North Dakota Century Code section 57-38.1-12 and article IV(12) of North Dakota Century Code section 57-59-01 and section 81-03-09-21.
  - (b) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.
  - (c) "Mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.
  - (d) "Original cost" is deemed to be the basis of the property for federal income tax purposes prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions, or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is ascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer in accordance with section 81-03-09-19.
  - (e) "Property used during the course of the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

- (f) "Purchased transportation" means the taxpayer's use of a motor vehicle owned and operated by another for the purpose of transporting tangible personal property for which a charge, whether based upon a per diem, mileage, or other basis is incurred.
  - (g) The "value" of owned real and tangible personal property means its original cost, in accordance with North Dakota Century Code section 57-38.1-11 and article IV(11) of North Dakota Century Code section 57-59-01 and section 81-03-09-19.
  - (h) The "value" or rented real and tangible personal property means the product of eight times the net annual rental rate, in accordance with North Dakota Century Code section 57-38.1-11 and article IV(11) of North Dakota Century Code section 57-59-01 and section 81-03-09-20.
- (3) The denominator and numerator of the property factor. The denominator of the property factor must be the average value of all the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor must be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this section, must be included in the numerator of the property factor in accordance with North Dakota Century Code sections 57-38.1-10 through 57-38.1-12 and article IV(10)(11)(12) of North Dakota Century Code section 57-59-01 and sections 81-03-09-15 through 81-03-09-21.

Mobile property, as defined in this section, which is located within and without this state during the income year must be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles. Mobile property located solely within this state during the income year must be included in the numerator of the property factor. A trucking company's property factor may be modified to include a portion of purchased transportation to more fairly represent the company's in-state activities. Absent clear and convincing evidence to show otherwise, forty percent of the purchased transportation contract must be included in the property factor as rental property and capitalized in accordance with section 81-03-09-20. In addition, the mileage related to the

purchased transportation contract must be included in the mobile property miles.

- b. The payroll factor. The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business income, in accordance with North Dakota Century Code sections 57-38.1-13 and 57-38.1-14 and article IV(13)(14) of North Dakota Century Code section 57-59-01 and sections 81-03-09-22 through 81-03-09-25.

With respect to personnel performing services within and without this state, compensation paid to such employees must be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles.

- c. The sales factor.

- (1) In general. All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business which produce business income must be included in the denominator of the revenue factor, in accordance with North Dakota Century Code section 57-38.1-01 and article IV(1) of North Dakota Century Code section 57-59-01 and sections 81-03-09-03 through 81-03-09-06.

The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with North Dakota Century Code sections 57-38.1-15 through 57-38.1-17 and article IV(15)(16)(17) of North Dakota Century Code section 57-59-01 and sections 81-03-09-26 through 81-03-09-31.

- (2) The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:
  - (a) Intrastate. All receipts from any shipment which both originates and terminates within this state.
  - (b) Interstate. That portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

- d. Records. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this section. Such records are subject to review by the tax department or its agents.
- e. De minimus nexus standard. Notwithstanding any provision contained herein, this section does not apply to require the apportionment of income to this state if the trucking company during the course of the income tax year neither:
  - (1) Owns nor rents any real or personal property in this state, except mobile property.
  - (2) Makes any pickups or deliveries within this state.
  - (3) Travels more than twenty-five thousand mobile property miles within this state provided that the total mobile property miles traveled within this state during the income tax year does not exceed three percent of the total mobile property miles traveled in all states by the trucking company during that period.
  - (4) Makes more than twelve trips into this state.

**History:** Effective November 1, 1987; amended effective May 1, 1991.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38, 57-38.1, 57-59

**81-03-09-38. Special rules - Television and radio broadcasting.** The following special rules are established in respect to the apportionment of income from television and radio broadcasting by a broadcaster that is taxable both in this state and in one or more other states.

1. **In general.** When a person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network, including owned and affiliated stations, or through an affiliated, unaffiliated, or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state must be determined pursuant to North Dakota Century Code chapter 57-38.1 and article IV of North Dakota Century Code section 57-59-01, and the regulations issued thereunder by this state, except as modified by this section. This section also applies to telecasting by cable television systems.