



MOTION PICTURE ASSOCIATION  
of America, Inc.

## **Supporting Memo for Proposed Apportionment Formula Changes**

Broadcasters generally have two distinct revenue streams. The first consists of advertising receipts from national and/or local advertisers. The MPAA's proposed amendments create a method of taxing the receipts for these transactions based on the commercial domicile of the broadcasters' direct customers with whom they have privity of contract. It apportions sales to Oregon that are derived from a broadcaster's actual Oregon customers (e.g., advertisers commercially domiciled in the State). A commercial domicile method reflects the taxpayer's market and is efficient to administer and audit. Additionally, since the commercial domicile of a broadcaster's customers is readily identifiable, it cannot be manipulated. The proposed amendment will bring certainty in determining the proportionate amount of these receipts that is properly attributable to Oregon.

Recently, the Illinois and Michigan legislatures overhauled their corporate tax structures and adopted a market based approach based on commercial domicile as they wanted to ensure an equitable treatment for broadcasters. Other states, which utilize this commercial domicile apportionment methodology, include North Carolina and Florida.

These amendments provide clear and definitive rules for both the Department of Revenue and taxpayers, eliminating the risk of lengthy litigation as well as the risk of inconsistent interpretation and application of the statute. The proposed method would generate a new and meaningful revenue source from national broadcasters which current law does not provide.

Under current law, the state sources receipts based on a viewing audience methodology i.e., based on the relative size of the in-state viewing audience for a broadcaster's programs. This outdated methodology is based on a mistaken notion that a broadcaster's customers are the viewers. In fact, a broadcaster's customers are the advertisers who purchase commercial time from the broadcasters and the distributors who license its television programming. Broadcasters have no direct connection with (contractual or otherwise), and do not derive revenue from, television viewers. Second, technological changes have made the viewing audience method impossible in many cases to administer and apply. The proliferation of distribution channels for programming, and in particular the distribution of programming over the internet, make it impossible for broadcasters or taxing authorities to accurately identify or locate the ultimate viewers of any given program.

### **For the Cable Industry**

The cable industry supports a clear and fair method of apportioning sales to Oregon and suggests allocating sales to the state based on the percentage (proportion) of work taking place in the state to generate the sales compared to the work performed across the country.

The Proportional method is an accurate representation of where work is conducted and therefore, in which states sales should be attributed for purposes of calculating the sales factor.

Current Oregon law 'All or Nothing Rule' not workable or fair for all taxpayers: This proposal does not attribute "zero" sales to a state when, in fact, work is being conducted there which generates revenue. In contrast, the "all or nothing" approach does not take into account the relative amount of sales producing activities in Oregon because the law requires a majority of sales activity take place in Oregon for sales to be allocated here.