To:	MTC Compact Member State Representatives
From:	Joe Huddleston, Executive Director
Date:	September 5, 2014
Subject:	Bylaw 7 Survey of Member States - Recommended Conforming Amendments to Multistate Tax Compact Article IV [UDITPA]

This memorandum includes an official survey required by the Commission's Bylaws as an essential part of developing a uniformity recommendation.
Your response is requested by October 17, 2014

Enclosed please find a Bylaw 7 Survey Response Form. Bylaw 7 provides that any recommendation for action by the Executive Committee to the Commission relating to uniform or compatible tax laws, regulations or administrative practices, shall first be circulated to affected members. If the majority of the affected members respond that they would consider adoption of the recommendation, then that recommendation may be placed on the Commission's agenda. If the majority of affected members do not respond that they would consider adoption of the recommendation, it will be referred back to the Executive Committee for further consideration.

The enclosed survey relates to the Executive Committee's recommendation to make conforming amendments to Article IV [the Uniform Division of Income for Tax Purposes Act, UDITPA]. Attachment A sets out the recommended conforming amendments. A copy of the Hearing Officer's Report is available online at:

http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Pomp%20final%20final3.pdf

If your state is an "affected State" within the meaning of MTC Bylaw 7 (see a list of states determined to be affected states below), we request that you return a completed survey response form to us by email or mail on or before October 17, 2014. As indicated on the survey form, all responses should be e-mailed to Loretta King at lking@mtc.gov or mailed to her attention at the address indicated.

Please note that your responses may be considered "public records" open to public inspection.

Summary of Recommended Amendments

The recommended conforming amendments are necessitated by recent amendments recommended by the Executive Committee and adopted by the Commission at its annual meeting July 30, 2014. The conforming amendments reflect that the terms "business income" and "nonbusiness income" were changed to "apportionable income" and "nonapportionable income" respectively. They also reflect that the term "receipts" (or "receipt") was substituted for "sales" (or "sale") when referring to the apportionment factor or to the actual amounts making up the apportionment factor (but not where the reference is to "sale" or "sales" as a transaction).

Procedural Summary

The project to revise Article IV [UDITPA] began in July, 2009, when the MTC Executive Committee referred the proposal to the MTC Uniformity Committee. The Uniformity Committee completed its work on draft model amendments in March, 2012. The Executive Committee approved the draft model amendments for public hearing in December, 2012. The public hearing was held on March 28, 2013, with Professor Richard Pomp serving as the MTC hearing officer. At its meeting on May 8, 2014, the Executive Committee voted to recommend to the Commission the draft model amendments to Article IV [UDITPA]. The Committee took notice that if the amendments were eventually adopted, there would also need to be conforming amendments made to reflect the changes. After a Bylaw 7 survey of the recommended amendments was conducted, and a majority of states responded that they would consider adopting these amendments, they were included in the agenda of the Commission's annual meeting on July 30, 2014 where they were adopted.

Bylaw 7 Survey

The Commission's Bylaw 7(g) states: "Any recommendation for action submitted by the Executive Committee to the Commission relating to uniform or compatible tax laws, regulations or administrative practices, regardless of whether such matters required public hearings, shall be circulated to the members by the Executive Director for not less than 30 days to determine if the affected members will consider adoption of the recommendation within their respective jurisdictions." It further provides: "If a majority have agreed, the Chairman shall direct the consideration of the item at the next regular meeting of the Commission, with proper notice provided according to Bylaw 4. If a majority of affected members have not agreed to consider adoption of the item, the Chairman shall refer the recommendation for Commission action back to the Executive Committee for further consideration."

List of Affected and Unaffected Multistate Tax Compact Member States

The staff of the Commission has made an initial determination of the affected states within the meaning of Bylaw 7 based on whether corporate income taxes are imposed by either the state or its political subdivisions. **If you believe we have erroneously classified your state, please advise us of that fact and the basis upon which you have reached the contrary conclusion.**

Affected Member States		Unaffected Member States
Alabama	Missouri	(None)
Alaska	Montana	
Arkansas	New Mexico	
Colorado	North Dakota	
District of Columbia	Oregon	
Hawaii	Texas	
Idaho	Utah	
Kansas	Washington	
Michigan		

Please do not hesitate to contact Sheldon Laskin or me via phone at 410-484-2790 or by e-mail at slaskin@mtc.gov or jhuddleston@mtc.gov if you have any questions about the proposal or the procedure that is being followed in this instance.

MULTISTATE TAX COMMISSION—BYLAW 7 SURVEY RESPONSE FORM

Recommended Conforming Amendments to Multistate Tax Compact Article IV [UDITPA]

Please return by mail or e-mail to:
Ms. Loretta King
Multistate Tax Commission
444 North Capitol Street, N.W., Suite 425, Washington, DC 20001
Phone: (202) 650-0300—e-mail: lking@mtc.gov
Your response is requested by October 17, 2014

From: ____
(Name of Tax Agency Official)

Jurisdiction: ____________________________________

The MTC Executive Committee has recommended the Commission consider adoption of conforming amendments to Article IV [UDITPA] and has authorized the Executive Director to conduct a Bylaw 7 survey.

Attachment A contains the recommended conforming amendments that are the subject of this Bylaw 7 survey. A copy of the Hearing Officer's Report is available online at:

http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Pomp%20final%20final3.pdf

The purpose of this survey is to determine whether a majority of affected Multistate Tax Compact Member States would consider adopting the recommended conforming amendments.

The question for your consideration and response is as follows:

If the Commission were to adopt the recommended conforming amendments to Article IV of the Compact [UDITPA], as set out in Attachment A, would your agency consider adoption of the recommended amendments?

[ ] YES [ ] NO

If you have marked "NO" but a change in the proposal would change your answer to "YES," please note such changes or other comments that you might have in the space provided on the next page. Alternately, if you have marked "NO" because you do not believe your state is an "affected member," please note this fact. Any other comments you believe may be relevant would also be appreciated.

Comments and/or suggested changes (attach additional sheets if necessary):

ATTACHMENT A

CONFORMING AMENDMENTS TO ARTICLE IV [UDITPA] (Showing relevant sections.)

. . .

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute ~~nonbusiness~~ nonapportionable income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

. . .

9. All ~~business~~apportionable income shall be apportioned to this State by multiplying the income by a fraction [State should define its factor weighting fraction here. Recommended definition: "the numerator of which is the property factor plus the payroll factor plus two times the ~~sales~~receipts factor and the denominator of which is four."]

. . .

15. The ~~sales~~receipts factor is a fraction the numerator of which is the total ~~sales~~receipts of the taxpayer in this State during the tax period and the denominator of which is the total ~~sales~~receipts of the taxpayer everywhere during the tax period.

16. ~~Sales~~Receipts from the sale of tangible personal property are in this State if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this State regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the State of the purchaser.

17. (a) ~~Sales~~Receipts, other than ~~sales~~receipts described in Section 16, are in this State if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(1) in the case of sale, rental, lease or license of real property, if and to the extent the property is located in this state;

(2) in the case of rental, lease or license of tangible personal property, if and to the extent the property is located in this state;

(3) in the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(4) in the case of intangible property,

(i) that is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(ii) that is sold, if and to the extent the property is used in this state, provided that:

(A) 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 this state" if the geographic area includes all or part of this state;

(B) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease or licensing of such intangible property under subsection (a)(4)(i); and

(C) all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the ~~sales~~<u>receipts</u> factor.

(b) If the state or states of assignment under subsection (a) cannot be determined, the state or states of assignment shall be reasonably approximated.

(c) If the taxpayer is not taxable in a state to which a ~~sale~~<u>receipt</u> is assigned under subsection (a) or (b), or if the state of assignment cannot be determined under subsection (a) or reasonably approximated under subsection (b), such ~~sale~~<u>receipt</u> shall be excluded from the denominator of the ~~sales~~<u>receipts</u> factor.

(d) [The tax administrator may prescribe regulations as necessary or appropriate to carry out the purposes of this section.]