



**MULTISTATE
TAX
COMMISSION**

**Nineteenth
Annual Report**

1985 - 1986

For the fiscal year of
July 1, 1985-June 30, 1986

Multistate Tax Commission



KENNETH J. KIRKLAND

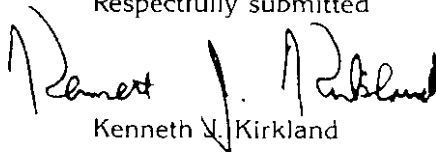
November 30, 1986

To the Honorable Governors and State Legislators of Member States of the Multistate Tax Commission:

The purpose of the Multistate Tax Commission is to bring even further uniformity and compatibility to the tax laws of the various states of this nation and their political subdivisions insofar as those laws affect multistate business, to give both business and the states a single place to which to take their tax problems, to study and make recommendations on a continuing basis with respect to all taxes affecting multistate businesses, to promote the adoption of statutes and rules establishing uniformity, and to assist in protecting the fiscal and political integrity of the states under the federal Constitution.

I respectfully submit to you the Nineteenth Annual Report of the Multistate Tax Commission. This report covers the Commission's activities for the fiscal year beginning July 1, 1985 and ending June 30, 1986. It includes a report on receipts, expenditures and operations for that period from Rhode, Scriptor and Associates, Certified Public Accounts in Boulder, Colorado.

Respectfully submitted



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Contents

The Multistate Tax Commission: An Introduction and Overview	3
Report of the Executive Director	7
Staff Members	13
Committees	15
Officers and Executive Committee Members	17
Representatives of Party States of the Multistate Tax Compact	19
Tax Administrators	
Associate Member States	23
Non-Member States	24
Appendices	
Appendix A—Agreement on Exchange of Information [Income Tax]	27
Appendix B—Agreement on Exchange of Information [Sales and Use Tax]	29
Appendix C—Trucking Regulation	31
Appendix D—Recordkeeping Regulation	35
Appendix E—Statement of Practices	39
Appendix F—Update on Adoption of MTC Regulations	43
Appendix G—GDITPA Adoptions	45
Appendix H—Multistate Tax Compact Enactments	47
Appendix I—Report of Certified Public Accountants	51

The Multistate Tax Commission: An Introduction and Overview

The Multistate Tax Commission is an organization of states created for the purpose of bringing some order to the state taxation of multistate businesses. Recognizing both the confusion to taxpayers and the dangers of federal preemption created by the then-current plethora of state laws and practices, the Multistate Tax Compact was developed in 1966 as a means by which to develop alternative approaches. Activated in 1967, the Commission has nineteen members, including the District of Columbia; another ten states have been granted associate membership at their request.

The purposes of the Commission are stated in the Compact: to facilitate proper determination of state and local tax liability of multistate taxpayers, to promote uniformity or compatibility of tax systems, to facilitate taxpayer convenience and compliance, and to avoid duplicative taxation. The Commission acts as a resource to those ends through research and publication, seminars, litigation, and conduct of a joint audit program, and representation of member state interests in Washington, D.C.

States join the Commission by enacting the Multistate Tax Compact, which incorporates the Uniform Division of Income for Tax Purposes Act (UDITPA). This act provides ground rules for apportioning income of multistate businesses to all states in which the taxpayer does business. All business income is apportioned according to a formula which takes into account the in-state payroll, property, and sales of a corporation as fractions of its total payroll, property, and sales; these fractions are then averaged and the result is the percentage of a taxpayer's total income which is apportioned to that state for tax purposes. Non-business income (such as that from passive investments) is allocated to the state where the corporate domicile is located. This simple approach (though occasionally complex in application) was designed by the National Conference of Commissioners on Uniform State Laws to ensure that there would be no double taxation and no undertaxation of corporate income were all states to enact the law. To avoid double sales taxation, the Compact also includes a uniform credit provision to prevent a transaction from being taxed twice.

When a state joins the Commission, the director of its tax agency becomes that state's representative on the Commission. The full Commission meets annually, normally in July of each year; between meetings, the Commission's affairs are supervised by an Executive Committee consisting of the officers of the Commission (Chairman, Vice-Chairman, and Treasurer), and four members elected by the full Commission. Past Chairmen serve as *ex officio* members. The operations of the Commission are carried out by a staff headed by the Executive Director. The administrative and legal staffs are located at the headquarters office in Boulder, Colorado; the Commission also maintains audit offices in Chicago, Houston, and New York City, and has a representative in Washington, D.C. Commission operations are funded by administrative dues (apportioned according to tax revenues) and audit fees from the member states.

The Joint Audit Program

The Commission differs from other interstate and tax organizations in that it serves as an operating arm of member states through the joint audit program. Member states pool their resources to select candidates for corporate income, sales and use, franchise and gross receipts tax audits. The MTC audit staff carries out these audits just as though they were part of a state's own audit staff, forwarding their findings and recommendations to the member states for assessment and collection at the completion of the audit. A single MTC audit takes the place of separate and duplicative audits by member states, and provides obvious economies of scale to the states. At the same time, it relieves the taxpayer of the burden of multiple audits. The MTC provides businesses with a forum through which to seek resolution of inconsistencies in the state tax rules which become apparent during a joint audit.

Aside from its economies of scale and its financial benefits—in fiscal 1985-86 the member states received approximately \$17 in suggested tax assessments for each dollar invested in the program—the audit program serves the Commission's goals in other ways as

Report of the Executive Director

Joint Audit Program

The Joint Audit Program continues to evolve in response to both the changing audit environment and the needs of the member states. This year the staff underwent some changes: new managers were appointed in the New York office, the audit planning process was extended to cover an additional year into the future, and the staff significantly expanded the role that computers play in the audit process. While proposed assessments were not as great as the record set last year, they were more than satisfactory and the number of cases closed was comparable to the levels achieved in prior years.

In order to make the Joint Audit Program more compatible with state audit selection, the Commission adopted a new selection process which provides for an audit plan, with cases assigned by auditor twelve months in advance, and allows selection of audit candidates twenty-four months in advance. In the year just completed, for example, the Commission developed a plan which assigns cases by auditor through the entire 1986-87 fiscal year, and developed a list of candidates which will be audited during the 1987-88 fiscal year. The new process, developed through the guidance of the Audit Committee, should make it easier for member states and the MTC staff to plan around each other and ensure that the MTC program becomes a fully integrated supplement to each state's own audit activities. As the Commission begins to extend the plan to the 1988-89 fiscal year and beyond, it expects to refine the selection process further.

Like many states, the Commission has gradually expanded the use of microcomputers in the audit process. Staff members have designed templates for spreadsheet programs which now allow the production of almost all schedules on the computer. While computerization is valuable for most audit programs because it simplifies routine calculation and recalculation, it is even more valuable for the joint audit program because of the number and variety of schedules involved. Changing one number in the denominator of one factor on an income tax audit can result in the recalculation of dozens of

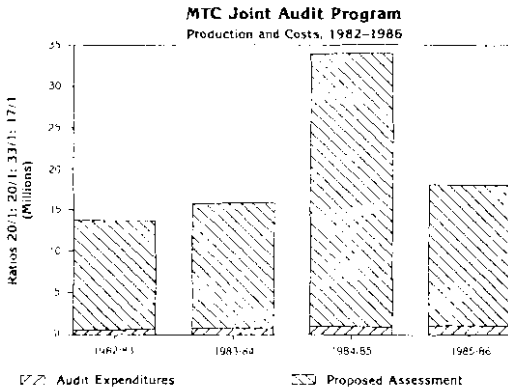
schedules; computerizing this process makes it possible to reduce the amount of time devoted to routine work and increase the time available for analytical and investigative activity. Computerization also makes possible quick estimates of tax effects in order to determine whether a possible change is material, and allows early production of estimated assessments. The Commission has purchased microcomputers for all of its offices; over the next few years, it anticipates gradual expansion until each auditor would be provided with a laptop portable computer to use in the field while performing audits.

The Commission experimented in the late seventies with computerized auditing, but those attempts ultimately proved unsuccessful. Available computer hardware and software were not adequate to the task at that time. Today, with off-the-shelf spreadsheet software and microcomputers, instead of custom programs and leased mainframe computers, the costs are much lower while development of programs by auditors, rather than outside consultants, is the rule. Indeed, the Commission will need to continue progress in this area merely to keep pace with its member states.

The Joint Audit Program continues to provide respectable performance. This year Commission auditors closed fourteen income and nine sales tax cases, for total proposed assessments of nearly \$14 million; additional revenues to member states from multiyear settlements negotiated by MTC staff amounted to slightly more than \$3 million. The audit program thus generated slightly over \$17 million in benefits to member states at a cost of somewhat more than a million dollars, for a benefit to cost ratio of nearly 17 to 1. While this does not compare with the 33 to 1 ratio of last year, it is quite respectable, and the Commission can point with pride to an average benefit/cost ratio of nearly 20 to 1 over the past four years.

On an experimental basis, the Commission approved limited use of contract auditing. Audit services could be offered to either a political subdivision of a member state (as contemplated

in the Compact) or could be provided for a limited time to a non-member state in order to give them a first-hand opportunity to observe the audit program. Though the Commission does not anticipate widespread use of this latter provision, it hopes to encourage potential members to consider the adoption of contract auditing as a preliminary step toward membership. The Commission has not yet signed any contracts for provision of audit services, though it did respond to a request for proposals to provide audit services to a large political subdivision of a member state.



Colorado piggybacks on federal taxable income. The MTC brief argued against that position. The case is still pending.

In the Oregon case, *Atlantic Richfield Company v. Department of Revenue*, SC 30995, the Court issued a ruling on April 1, 1986, that intangible drilling and development costs (IDCs) incurred in drilling gas and oil wells should not be excluded from the property factor of the apportionment formula in attributing the income of an oil company. In doing so, the Court expressed its intention and desire to further the cause of uniformity. The Department of Revenue then filed a petition for reconsideration in which it maintained that the decision did not move the state in the direction of uniformity. The Court granted the petition and then asked the Commission to file an *amicus* brief, setting forth the practice of the other states in regard to IDC's. The Commission staff surveyed the states, found a broad movement away from exclusion, and reported its findings to the Court in its brief. On July 1, the Court affirmed its original decision.

In addition to performing normal staff work for committees and responding to day-to-day inquiries and requests for advice, the legal staff undertook several major projects. Assisted by Tom Vosburg, who joined the staff in January as a research associate, Alan Friedman, Deputy General Counsel undertook a survey of states and taxpayers to determine problem areas in the application of UDITPA. The thirtieth anniversary of its drafting is fast approaching. Some observers have suggested that it may be time to think about revising the model act to broaden its application beyond mercantile and manufacturing activities in order to reflect changes in the economy. The survey constitutes an attempt to determine which parts of UDITPA seem to work satisfactorily and which parts generate implementation problems for both taxpayers and administrators. Final results are still being compiled; but preliminary results and suggestions for improvement of UDITPA were presented at the annual meetings of both the Commission and the National Association of Tax Administrators. At least preliminarily, Commission staff members have suggested that there should be some forum of tax administrators and

Legal Assistance and Litigation

It is now three years since the Commission has been directly involved in litigation; this has allowed the legal staff to focus its attention on coordinating educational activities, presenting speeches, publishing articles to support the Commission's goals, providing direct assistance to state legal staffs, supporting the audit program and the work of the audit and uniformity committees, and engaging in larger research projects. Additionally, the Commission has filed *amicus curiae* briefs in the Supreme Courts of Colorado and Oregon.

In the Colorado case, *Hewlett-Packard Co. v. State of Colorado*, 85 SA 340, the taxpayer insists that the state, in performing worldwide combination, can apply the worldwide apportionment ratio to only that income reported by the taxpayer to the federal government because

taxpayers which meets on a regular basis to consider suggestions for revision and to recommend changes to the states; while the Commission could serve as such a forum, particularly if its membership were to expand to include most or all of the (IDITPA states, it need not be the only choice.

Another major area of activity has been additional research and recommendations on the taxation of banks and financial institutions. Assistant General Counsel Sandra McCray has surveyed and studied current state practices and then developed proposed model regulations for the allocation and apportionment of income from financial institutions. The results of the survey have been published as a handbook, *State Taxation of Banks and Financial Institutions: Results of Recent Surveys*. In general, the research appears to suggest that tax laws have not treated banks in the same manner as other corporations. With deregulation of banking and the rapid growth of interstate banking, Commission staff members suggest that the states need to give serious thought to revising their laws and regulations to take into account these changed circumstances. A preliminary draft of proposed regulations was reviewed at the MTC Annual Meeting. A later draft should be available for public comment by the time this report is published. Additionally, some of the research dealing with state jurisdiction to tax financial institutions will be published in January as a law review article authored by Ms. McCray.

The legal staff also continue to edit and write the bulk of the material which appears in the *MTC Review*, now published quarterly. In addition to continued updating of the audit manuals, the staff has produced an updated and revised *Corporate Tax Handbook*, an outline and compilation of cases and materials formerly known as the *Unitary Handbook*. The Handbook is a useful reference guide to the major issues involved in determining the parameters of a unitary business and in the apportioning of income; it also includes brief summaries of almost all major cases in the area.

The legal staff has also been extensively involved in the development of a model regulation for the trucking industry, a sales and use

tax recordkeeping regulation, and a statement of state practices under P.L. 86-272. Finally, the National Bellas Hess Project has been moving very well. Several of these subjects are discussed in more detail below.

Major Policy Issues and State Responses

Income Tax

In discussing the issues surrounding state use of worldwide combination last year, this report noted the disparity between state movement to water's edge combination, on the one hand, and federal inactivity regarding the assistance agreed to in the Working Group report on the other: "...the willingness of states to act has not been matched by an equal commitment on the part of the federal government;" unfortunately, that statement remains even more true this year. Since the publication of the Working Group report, Colorado, Florida, Idaho, Massachusetts, Nebraska, New Hampshire, Oregon, and Utah have all receded from the use of worldwide combination, with most moving to domestic combination. The California Legislature has passed water's edge combination, and the Governor has signed it into law. Montana is studying revision of their use of worldwide combination; and an interim committee has recommended water's edge legislation in North Dakota. Only Alaska appears likely to refrain from action in this area.

This remarkable upsurge of activity, largely the result of voluntary compliance with the goals and spirit of the Working Group, was unfortunately not matched by an equivalent level of action on the part of the federal government. Instead, of the major assistance goals of the federal government, only one—IRS training in international issues for state personnel—has materialized. While the IRS did ask for some increases in funding for international enforcement, they were not commensurate with what was discussed in the Working Group. The single most important issue—the domestic disclosure spreadsheet—was discussed in draft legislation, but when finally introduced was made part of S.1974, a bill by Senator Wilson (R-Calif) which

would prohibit state use of worldwide combination, would exclude some domestic corporations from the water's edge and would restrict state taxation of dividends. This bill, introduced with Administration support, clearly violates the letter and spirit of the Working Group report and the entire effort behind it.

Fortunately for state interests, Congress has wisely refrained from acting on the Wilson bill thus far. While there were attempts made to attach it as an amendment to the tax reform act, these failed thanks to strong opposition from the states, especially Montana, through its Senators; the Washington, D.C. representative of the Commission was also a great help in successfully opposing this ploy. A hearing on the bill in the Senate Finance Subcommittee on Taxation and Debt Management has been scheduled for September 29; although this

represents a serious threat, the states can take some comfort from the fact that Congress is scheduled for final adjournment on October 3, so that legislation is unlikely to progress beyond the hearing before final adjournment and the consequent expiration of the bill.

The introduction of the bill and the persistence of its advocates are testimony to the continued importuning of the Administration by foreign governments, notably the British and Japanese. The states should be prepared for continuing pressure in this area next Congressional session. Some members of the Administration apparently are more concerned about these pressures than about their claimed commitment to federalism and fostering state autonomy.

Sales Tax

Reversing or limiting the effect of the *Bellas Hess* holding remains a major policy objective of the Commission, as it is of most state government groups. After having performed a major study, the U.S. Advisory Commission on Intergovernmental Relations endorsed corrective federal legislation as the most equitable solution to the problem. A committee appointed by the NATA drafted proposed legislation, which was largely incorporated into H.R. 5021 that was introduced this spring by Representative Jack Brooks (D-Texas). The MTC supports Congressional resolution of this problem. MTC Chairman John LaFaver has appointed a committee chaired by Harley Duncan, Kansas Secretary of Revenue and outgoing Commission Chairman, to work with a similar NATA committee to develop strategies aimed at enactment of the bill into law.

In a complementary effort, the Commission has also undertaken a National *Bellas Hess* project to promote increased collection and remittance of state sales and use taxes. Building on its success in getting two large mail-order retailers to sign agreements to collect and remit sales and use tax, the Commission has drafted agreements for voluntary compliance on the part of other retailers, and has circulated these agreements through the Direct Marketing Association, the Committee on State Taxation, and

Combination States

Worldwide	Domestic
Alaska	Arizona
Montana	California (effective 1/1/88)*
North Dakota	Colorado
	Idaho (effective 1/1/88 or 1/1 of year in which spread-sheet legislation is effective, whichever is earlier)
	Illinois
	Kansas
	Kentucky
	Maine
	Minnesota
	Nebraska
	New Hampshire
	New Mexico (taxpayer's option)
	New York
	Oklahoma
	Oregon
	Utah
	West Virginia (taxpayer's option)

*Note: In California the law adds a water's edge election, but worldwide combination is still available and its use is encouraged.

some public accounting firms. At least one retailer has already agreed to sign such a contract, and several others have expressed interest in doing so.

Efforts at voluntary compliance will continue through December, when the focus will shift to targeted audits. It is not unlikely that one or more of these audits will result in litigation in which the states will seek to overturn *National Bellas Hess* and/or to obtain confirmation of the constitutionality of their right to require use tax collection by mail order sellers whom *National Bellas Hess* currently appears to shield from that requirement. The Commission views such an effort as complementary to attempts to enact federal legislation. Successful litigation would offer a fallback position should federal legislation not be enacted.

The National Bellas Hess Project is funded by participating states; to date 27 states have agreed to participate in the project. All 16 member states of the Commission with sales taxes have agreed to join, as have 11 non-member states. The Commission has been very gratified by evidence of interest in the project which goes well beyond the membership; it indicates that the project is well-enough conceived to be of broad general interest.

As part of the project, the Commission will coordinate legal assistance in the event of litigation, including the provision of expert witnesses and the pooling of state resources. Such litigation may arise not only from the audits but also from state legislation. Both California and Illinois have passed legislation asserting that purchase of in-state advertising gives rise to nexus for the purpose of tax collection; Oklahoma has passed legislation which provides an even broader definition of nexus. Test case litigation seems likely to arise out of one or more of these bills, and the Commission is prepared to assist here as well.

Uniformity

As part of its ongoing charge to promote uniformity in the tax treatment of multistate businesses, the Commission approved two uniform regulations this year. Approval of a regulation constitutes a recommendation to states that

they adopt such a regulation in their state. (The regulations are reproduced in this report as Appendices C and D.) The regulation on the trucking industry is one of several regulations that the Commission has adopted for those industries which, in its judgment, require an apportionment procedure different from the standard UDITPA formula. The Commission has adopted similar regulations for railroads, contractors, and airlines. (The full texts of these regulations were printed in the 1984-85 Annual Report.) See Appendix F for a listing of regulations and of those states which have adopted them.

The trucking industry regulation uses sales, payroll, and property as apportionment factors, but prorates mobile property by a mileage factor. Additionally, it prorates some sales by mileage and includes a *de minimis* nexus standard. By design, its definitions of in-state and total miles are compatible with similar definitions put forth for registration and fuel use tax purposes in the NGA Working Group's Six Point Plan.

The recordkeeping regulation considerably expands the definitions of acceptable media in which to keep records for sales and use tax purposes, and attempts to keep such definitions consistent with current technology and practice.

Finally, in an attempt to provide some guidance for taxpayers, the Commission has adopted a statement of information concerning the practices of member states under P.L. 86-272. While not a formal regulation, the document does allow taxpayers and others to gain additional guidance as to what types of activities are currently looked to by the states to determine whether immunity exists under P.L. 86-272. The document also allows member states an opportunity to review their practices and to ensure that they are consistent with one another; it offers non-member states a point of departure for a similar review as well.

While other issues remain on the Commission agenda, such as the sales tax treatment of software, the classification of dock sales, and the application of the throwback rule to grain shipments, the major issues for activity in the coming year will probably revolve around the

UDITPA survey and the discussions it provokes as well as the issues associated with financial institutions and telecommunications.

Publications

In addition to the regular publication of the *MTC Review* and the continued updates of the income and sales tax audit manuals, the Commission has published the following items this year:

- *Corporate Income Tax Handbook*
This convenient reference source updates and incorporates material previously published as the *Unitary Handbook*.
- *State Taxation of Banks and Financial Institutions: Results of Recent Surveys*

- *Auditing for Arm's Length*

This booklet reprints articles on international taxation and the competent authority process recently published in various editions of the *MTC Review*.

Personnel

Turnover this year was considerably less than last year. Two auditors, Frank Kuehn and Rocco Miraldi, both left the New York office. New auditors this year are Steve Green (Chicago), Dick Mandel (New York), and Jeff Silver (New York). Tom Vosburg joined the Boulder staff as a research associate. The New York office was reorganized; instead of a single manager, Gerald Birk now manages the income tax staff and Mort Kotkin the sales tax staff.

Staff Members

Executive Director

Kenneth J. Kirkland was appointed Executive Director of the Multistate Tax Commission in February, 1985. Previously, he had been a staff member at the National Conference of State Legislatures, serving most recently as Director of Fiscal Affairs; had been an analyst for the Oklahoma State Legislature; and had been a faculty member at the University of Oklahoma and at Adrian College (Michigan). He is a graduate of Stanford University and holds an M.A. from the University of Oregon and a Ph.D. from the University of Michigan.

General Counsel

Eugene F. Corrigan became the Commission's General Counsel in February, 1985 after having served for sixteen years as its Executive Director. His prior experience included three years as a Sears, Roebuck tax attorney and ten years with the Illinois Department of Revenue, in the Chicago office of which he last served as Chief Counsel. During the mid-sixties, he was also a partner in the Chicago law firm of Stradford, Lafontant, Fisher and Corrigan. He is a graduate of Princeton University and of John Marshall Law School of Chicago. He is a Past Chairman of the Urban State and Local Government Law Section of the American Bar Association.

Deputy General Counsel

Alan H. Friedman's legal experience, over some fifteen years has included positions as Legal Counsel with the U.S. Justice Department, the U.S. Senate, and the Colorado Attorney General's office. As First Assistant Attorney General, he supervised the legal representation of Colorado's Governor, Secretary of State, Treasurer and, finally, Department of Revenue where he last served as Deputy Director. He is a graduate of the University of California at Berkeley and of Boalt Hall Law School at that University.

Assistant General Counsel

Sandra B. McCray has had extensive and varied legal and administrative experience in the office

of the Colorado Attorney General. There she has served: as prosecutor in consumer protection, medical malpractice and insurance fraud cases; as Administrator of the Consumer Credit Code; as Chief of the Financial Institutions Section; and as First Assistant Attorney General in charge of the Regulatory Law Section. A Phi Beta Kappa graduate of UCLA and a graduate of the University of Colorado Law School, she holds a Master's Degree in Taxation from Georgetown University.

Program Coordinator

Clela A. Rorex joined the MTC in 1981. She holds a Bachelor of Arts Degree and a Master's Degree in Public Administration from the University of Colorado. Her previous experience includes service as: the publicly elected Clerk and Recorder of Boulder County; acting general manager of the Colorado Music Festival; business manager for the Sacramento Civic Theatre; insurance and financial counselor; manager of the Visiting Scientists Program of the Joint Institute for Laboratory Astrophysics at the University of Colorado; and management representative at the U.S. Naval Exchange at Guantanamo Bay. She also wrote and published the first edition of the *Colorado Legislative Almanac*.

Audit Managers

Chicago: Eugene J. Dowd joined the Multistate Tax Commission in 1974 after performing and supervising income tax audits of large multinational corporations in the Chicago office of the California Franchise Tax Board for thirteen years. Previously he had served as budget accountant and as the staff internal auditor of the Armour Research Foundation.

Houston: Robert Milligan was a corporate accountant for nearly ten years. He was the Tax Manager of two different corporations prior to joining the Michigan Department of Revenue as an auditor in 1961. There, he audited for Income, Sales and Use, Franchise, Intangibles, Business Activities and other taxes until 1977, when he joined the staff of MTC.

New York: Gerald Birk and Morton Kotkin have served jointly as Income Tax Audit Manager and Sales Tax Audit Manager, respectively, since February, 1986. Gerald Birk has been with the Commission for five years. Before joining the MTC in 1981, he had been an auditor and audit supervisor with the New York office of the California Franchise Tax Board for eight years. A native of Brooklyn, New York, he graduated from Long Island University in 1973 with a Bachelor of Science Degree in Accounting. Morton Kotkin has served with the Commission as a Senior Auditor, Eastern Regional Manager and Senior Review Auditor. Before joining the MTC in 1974, he had been an auditor and field audit supervisor with the New York office of the California State Board of Equalization for twelve years, performing and supervising sales, use, property and cigarette tax audits of California's largest out-of-state taxpayers. Also a native of Brooklyn, New York, he graduated from New York University in 1961 with a Bachelor of Science Degree in Accounting.

Consultants

William D. Dexter has served the MTC in an Of Counsel capacity since July 1983 when he retired as General Counsel.

James Rosapepe has served as Legislative and Media Consultant for the MTC since 1977. He is a partner with Rosapepe, Powers and Spanos in Washington, D.C.

Audit Staff

Income Tax

Gerald Birk (New York)
Eugene Dowd (Chicago)
Paul Ezzone (New York)
Steve Green (Illinois)
Alan Hild (New York)
Robert Milligan (Texas)
Paul Mond (Texas)
Arthur Schwartz (New York)
Jeff Silver (New York)
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Joselito Vitug (Illinois)

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Michael Hnath (New York)
Morton Kotkin (New York)
Richard Mandel (New York)
Edward Ruby (Illinois)

Support Staff

Edith Bishop (New York)
Betty DeBruyne (Colorado)
Connie Fuerst (Colorado)

Committees

Audit Oversight Committee

Jeff Miller, Chairman (Montana)
Robert Bonnici (California)
Phil Aldape (Idaho)
Thomas Sheridan (Kansas)
Gerome Caulfield (Minnesota)

Audit Committee

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Martin J. Richard (Alaska)
Everett Leath (Arkansas)
Robert Bonnici (California)
Frank Beckwith (Colorado)
J. Walter Lund (DC)
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Phil Aldape (Idaho)
Joe E. Randall (Idaho)
Tom Sheridan (Kansas)
Joseph Tomczyk (Michigan)
Gerome Caulfield (Minnesota)
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Robert Kesse' (North Dakota)
Tom Everall (Oregon)

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Uniformity Committee

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Kenneth Murayama (Hawaii)
Joe E. Randall (Idaho)
Tom Sheridan (Kansas)
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Gerome Caulfield (Minnesota)
James R. Beckham (Missouri)
Gerald Foster (Montana)
Manuel Gallegos (New Mexico)
Robert Kesse (North Dakota)
Tom Everall (Oregon)
Ron Larson (South Dakota)
Donald R. Bosch (Utah)

Multistate Tax Commission Officers 1986/87

Chairman



John LaFaver
(Montana)

Vice-Chairman



Melvin Jones
(D.C.)

Treasurer



R.H. Hansen
(Utah)

Executive Committee



Robert Bowman
(Michigan)



Bob Bullock
(Texas)



Alan Charnes
(Colorado)



Tom Triplett
(Minnesota)

Ex Officio



Kent Conrad
(North Dakota)



Harley Duncan
(Kansas)



Gerald Goldberg
(California)



Larry Looney
(Idaho)

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³ MTC Chairman 1980-1981

⁴ MTC Chairman 1984-1985

⁵ MTC Chairman 1985-1985

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*The Commission has made provisions for associate membership in bylaw 13, as follows:

13. Associate Membership

(a) Associate membership in the Compact may be granted, by a majority vote of the Commission members, to those States which have not effectively enacted the Compact but which have through legislative enactment made effective adoption of the Compact dependent upon a subsequent condition or have, through their Governor or through a statutorily established State agency, requested associate membership.

(b) Representatives of such associate members shall not be entitled to vote or to hold a Commission office but shall otherwise have all the rights of Commission members.

Associate membership is extended especially for states that wish to assist or participate in the discussions and activities of the Commission, even though they have not enacted the Compact. This serves two purposes: (1) it permits and encourages states that feel that they lack knowledge about the Commission to become familiar with it through meeting with the members, and (2) it gives the Commission an opportunity to seek the active participation and additional influence of states which are willing to assist in a joint effort in the field of taxation while they consider or work for enactment of the compact to become full members.

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Appendix A

Agreement on Exchange of Information Income Tax (Updated August, 1986)

In the interest of furthering the mutual interests of the undersigned states represented by the undersigned officials through benefits which can be derived from the exchange of information among said states, each of said officials does hereby enter into the following Agreement for the exchange of information with every other undersigned official.

The undersigned hereby mutually agree to exchange information, to the full extent permitted by their respective laws, in accordance with the terms and limitations below:

1. For the purposes of this Agreement, income tax means a tax imposed on or measured by net income, including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
2. This agreement shall be applicable with respect to:
 - a. The inspection of income tax returns of any taxpayer; and
 - b. The furnishing of an abstract of the return of income of any taxpayer; and
 - c. The furnishing of any information concerning any items contained in any return of income of any taxpayer; and
 - d. The furnishing of any information disclosed by the report of any investigation of the income or return of income of any taxpayer, exclusive of any information obtained through an agreement between any of the undersigned states and the Internal Revenue Service.
3. For purposes of this Agreement, taxpayer includes any individual, corporation, partnership or fiduciary subject to an income tax or required to file an income tax return.
4. This Agreement is not limited to a specific period of time or to returns, documents or information relating to any specific years or periods; and it will be considered to be in effect until revoked.
5. Additions and changes, including definitions, in the provisions of this Agreement, may be made by mutual consent of the proper officials of the undersigned states, and shall become an attachment to this Agreement.
6. No information obtained pursuant to this Agreement shall be disclosed to any person not authorized by the laws of the undersigned states.
7. The information obtained pursuant to this Agreement shall be used only for the purpose of administration of the income tax laws of the undersigned states.
8. This written Agreement shall not become effective between any two states until the authorized officials for both such states have signed it in the space provided below.
9. This written Agreement is not intended to revoke or supersede any other similar agreement that may have been previously entered into between any two or more of the states represented below.
10. The undersigned agree to inform each other of the current statutory provisions of their respective states concerning the confidentiality of the material exchanged and the penalties for unlawful disclosure thereof.
11. Any of the undersigned state officials may, at their discretion, refuse to furnish information disclosed in the report of any investigation while such investigation is still in progress or during such time as litigation is contemplated or in process, if the official of the state making the investigation deems it in the best interests of his state for such information to be withheld pending determination of litigation.

12. Each of the undersigned state officials hereby affirms that he is the proper official charged with the administration of the income tax laws of his state.

Signatory States

Alaska	Indiana	Nebraska
Arkansas	Kansas	New Mexico
California	Louisiana	North Carolina
Colorado	Maine	North Dakota
Florida	Michigan	Oregon
Hawaii	Minnesota	Pennsylvania
Idaho	Missouri	Utah
Illinois	Montana	

Appendix B

Agreement on Exchange of Information Sales and Use Tax (Updated August, 1986)

In the interest of furthering the mutual interests of the undersigned states represented by the undersigned officials through benefits which can be derived from the exchange of information among said states, each of said officials does hereby enter into the following Agreement for the exchange of information with every other undersigned official.

The undersigned hereby mutually agree to exchange information, to the full extent permitted by their respective laws, in accordance with the terms and limitations below:

1. For the purposes of the Agreement, sales tax includes general excise and/or gross receipt taxes and means a tax imposed on a sale or exchange of personal property and/or services, as well as on gross receipts from trade or business; and use tax means a tax other than ad valorem tax, on the privilege of storing, using or consuming personal property and/or services.
2. This Agreement shall be applicable with respect to:
 - a. The inspection of sales and use tax returns of any taxpayer; and
 - b. The furnishing of an abstract or the exchange of computer information regarding the sales or use tax return of any taxpayer; and
 - c. The furnishing of any information concerning any items contained in any sales or use tax return of any taxpayer; and
 - d. The furnishing of any information disclosed by the report of any investigation of the sales or use tax return of any taxpayer.
3. For purposes of this Agreement, "taxpayer" includes any individual, corporation, partnership, organization, association, fiduciary, person or other entity, subject to payment or collection and remittance of sales or use tax or required to file a sales or use tax return.
4. This Agreement is not limited to a specific period of time or to returns, documents or information relating to any specific years or periods; and it will be considered to be in effect until revoked by one of the parties; however, the withdrawal of one party hereto shall not affect the Agreements among the remaining parties.
5. Additions and changes, including definitions, in the provisions of this Agreement, may be made by mutual consent of the proper officials of the undersigned states, and shall become an attachment to this Agreement.
6. No information obtained pursuant to this Agreement shall be disclosed to any person not authorized to receive such information by the laws of the undersigned states.
7. The information obtained pursuant to this Agreement shall be used only for the purpose of administration, and enforcement of the sales and use tax laws of the undersigned states.
8. This written Agreement shall not become effective between any two states until the authorized officials for both such states have signed it in the space provided below.
9. This written Agreement is not intended to revoke or supersede any other similar agreement that may have been previously entered into between any two or more of the states represented below.
10. The undersigned agree to inform each other of the current statutory provisions of their respective states concerning the confidentiality of the material exchanged and the penalties for unlawful disclosure thereof.
11. Any of the undersigned state officials may, at their discretion, refuse to furnish information disclosed in the report of any investigation while such investigation is

still in progress or during such time as litigation is contemplated or in process, if the official of the state making the investigation deems it in the best interests of his state for such information to be withheld pending final determination of litigation.

12. Each of the undersigned state officials hereby affirms that he is the proper official charged with the administration of the sales and use tax laws of his state.

This Agreement may be executed in counterparts, all of which taken together shall be deemed one original Agreement.

Signatory States

Arkansas	Maine	North Dakota
California	Massachusetts	Pennsylvania
Colorado	Michigan	South Dakota
Georgia	Minnesota	Tennessee
Idaho	Mississippi	Texas
Indiana	Missouri	Utah
Iowa	Montana	Washington
Kansas	Nebraska	Wyoming
Louisiana	New Mexico	

Appendix C

Multistate Tax Commission

Trucking Regulation

Adopted July 11, 1986

At its 1986 Annual Meeting in July, the MTC adopted a special income apportionment Regulation for Trucking Companies. In so doing, it established a Regulation which it recommends that all states adopt. The Regulation is the fourth of its type that the Commission has adopted. The other three special industry regulations pertain to Airlines, Contractors and Railroads.

The following is the text of the Trucking Regulation:

Reg. IV.18.(g). *Special Rules: Trucking Companies*

The following special rules are established with respect to trucking companies:

(1) *In General.* As used in this regulation, 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 regulation. 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 Article IV.1 and Regulation IV.1 thereunder. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Article IV.5 and .8, inclusive. 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 regulation. The sum of (i) the items of nonbusiness income directly allocated to this state plus (ii) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.

(2) *Business and Nonbusiness Income.* For definitions, rules, and examples for determining business and nonbusiness income, see Regulation IV.1.

(3) *Apportionment of Business Income*

(i) *In General.* The property factor shall be determined in accordance with Regulation IV.10 to .12, inclusive, the payroll factor in accordance with Regulation IV.13 to .14, and the sales factor in accordance with Regulation IV.15 to .17, inclusive, except as modified by this regulation.

(ii) *The Property Factor*

A. *Property Valuation.* Owned property shall be valued at its original cost and property rented from others, including purchased transportation, shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11 and Regulation IV.11. To the extent that the taxpayer's records reflect a separate charge incurred for the use of purchased transportation attributable to the property so used, such separate charge shall be used in calculating the value of rented property. If such a charge is not separated from that attributable to the compensation paid for the operator of the purchased transportation, the total combined charge shall be reduced by 20% to determine that portion of the charge attributable solely to the value of the rented property. Mobile property, other than purchased transportation, which is owned by other trucking companies and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made shall not be included in the property factor as rented property. Mobile property which is owned by the taxpayer and temporarily used by other trucking companies in their business and for which a per diem or mileage charge is made by the taxpayer shall be included in the property factor of the taxpayer.

B. *General Definitions.* The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

1. "Average value" of property means the amount determined by averaging the

values at the beginning and end of the income tax year, but the [insert here the title of the appropriate administrative agency] 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. (See Article IV.12 and Regulation IV.12.)

2. "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property, other than support vehicles used predominantly in a local capacity. Mobile property shall include purchased transportation.

3. A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

4. "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 unascertainable 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. (Regulation IV.11.(a).)

5. "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.

6. "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.

7. "Temporarily used" means the use of any mobile property owned by another for a period not to exceed a total of 30 days during any income year.

8. The "value" of owned real and tangible personal property means its original cost. (See Article IV.11 and Regulation IV.11.(a).)

9. The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Article IV.11 and Regulation IV.11.(b).)

C. *The Denominator and Numerator of the Property Factor.* The denominator of the property factor shall 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 shall 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 regulation, shall be included in the numerator of the property factor in accordance with Article IV.10 and .12 inclusive, and Regulation IV.10 and .12, inclusive.

Mobile property as defined in this regulation, which is located within and without this state during the income year shall 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.

(iii) *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. (See Article IV.13 and .14 and Regulation IV.13 and .14.) The numerator of the payroll factor is the total compensation paid in this state during the income year by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees shall be included in the numerator as provided in Article IV.13 and .14 and Regulation IV.13 and .14.

With respect to personnel performing services within and without this state, compensation paid to such employees shall 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.

(iv) *The Sales (Revenue) Factor*

A. *In General.* All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business which

produce business income shall be included in the denominator of the revenue factor. (See Article IV.1 and Regulation IV.1.)

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 Article IV.15 through .17 and Regulation IV.15 through .17.

(4) *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 regulation. Such records are subject to review by *(insert here the title of the appropriate administrative agency)* or its agents.

(5) *De Minimus Nexus Standard.* Notwithstanding any provision contained herein, this Regulation IV.18.(f) shall not apply to require the apportionment of income to this state if the trucking company during the course of the income tax year neither:

a. owns nor rents any real or personal property in this state, except mobile property; nor

b. makes any pick-ups or deliveries within this state; nor

c. 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; nor

d. makes more than twelve trips into this state.

Appendix D

Multistate Tax Commission Recordkeeping Regulation

Adopted July 11, 1986

Sales and use tax records are increasingly maintained on computers, microfilm and microfiche. Questions have regularly arisen in recent years as to whether or not states will consider such records to be acceptable for audit purposes and, if they will accept them, under what conditions they will do so.

The MTC has taken action for the purpose of encouraging the states to accept such records and to specify their requirements with respect to them. The result is a new regulation which the MTC adopted at its 1986 Annual Meeting. Commonly called "The Recordkeeping Regulation," it permits the taxpayer to eliminate the so-called "paper trail," which has generally been required in the past. This will enable the taxpayer to take advantage of modern recordkeeping techniques without having to maintain a separate and additional set of printed records for audit purposes.

The following is the text of the Recordkeeping Regulation:

Reg.VII.1. *Recordkeeping Sales and Use Tax Transactions*

(a) *In General.* Every retailer [seller] [vendor] [person] doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer [and every lessor and lessee of tangible personal property for use in this state] shall keep complete and adequate records as may be necessary for the Executive Director [Department] [Commissioner] [Commission] [Board] to determine the amount of sales and use tax for the payment and collection of which such retailer [seller] [vendor] [person] [and lessor and lessee] is liable under [cite relevant sales and use tax section]. Unless the Executive Director [Department] [Commissioner] [Commission] [Board] authorizes an alternative method of recordkeeping in writing, these records shall show:

- (1) Gross receipts from sales, or rental payments from leases, of tangible

personal property (including any services that are a part of the sale or lease) made in this state, irrespective of whether the retailer [seller] [vendor] [person or lessor and lessee] regards the receipts to be taxable or nontaxable.

- (2) All deductions allowed by law and claimed in filing return.
- (3) Total purchase price of all tangible personal property purchased for sale or consumption [or lease] in this state.

These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in the activity in question, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account together with all schedules or working papers used in connection with the preparation of tax returns.

(b) *Microfilm and Microfiche Records.* Records may be microfilmed or microfiched, including general books of account, such as cash books, journals, voucher registers, ledgers and like documents, so long as such microfilmed and microfiched records are authentic, accessible, and readable, and the following requirements are fully satisfied:

- (1) Taxpayer agrees to provide transcriptions of any information concerning sales and/or use tax liability on microfilm or microfiche which may be required for verifying said liability; and agree to provide appropriate facilities for preservation of the microfilm or microfiche for the periods required and open to examination.
- (2) All microfilmed and microfiched data must be indexed, cross-referenced and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included; and shall be systematically filed to permit ready access.

- (3) Taxpayer must make available upon request of the Executive Director [Department] [Commissioner] [Commission] [Board] a reader/printer in good working order at the examination site for reading, locating and reproducing any record concerning sales and/or use tax liability maintained on microfilm or microfiche.
- (4) Taxpayer must set forth in writing the procedures governing the establishment of its microfilm or microfiche system, and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the Board of Directors, general partner(s), or owner, whichever is applicable.
- (5) The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business.
- (6) Taxpayer must establish procedures with appropriate documentation so that the original document can be followed through the microfilm or microfiche system.
- (7) Taxpayer must establish internal procedures for microfilm or microfiche inspection and quality assurance.
- (8) Taxpayer is responsible for the effective identification, processing, storage, and preservation of microfilm or microfiche, making it readily available for as long as the contents may become material in the administration of any state revenue law.
- (9) Taxpayer must keep a record identifying the persons or business entities that produced the microfilm or microfiche records.
- (10) When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to

the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

- (11) All production of microfilm or microfiche and processing duplication, quality control, storage, identification, and inspection thereof must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards.

(c) *Records Prepared by Automated Data Processing Systems (ADP)*. An ADP tax accounting system may be used to provide the records required for the verification of tax liability. Although ADP systems will vary from one taxpayer to another, all such systems must include a method of producing legible and readable records which will provide the necessary information for verifying such tax liability. The following requirements apply to any taxpayer who maintains any such records on an ADP system:

- (1) *Recorded or Reconstructible Data*. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.
- (2) *General and Subsidiary Books of Account*. A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.
- (3) *Supporting Documents and Audit Trail*. The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the Execu-

tive Director [Department] [Commissioner] [Commission] [Board] upon request. The system shall be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available.

- (4) *Program Documentation.* A description of the ADP portion of the accounting system shall be made available. The statements and illustrations shall be sufficiently detailed to indicate: (A) the application being performed; (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and (C) the controls used to insure accurate and reliable processing. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record.
- (5) *Data Storage Media.* Adequate record retention facilities shall be available for storing tapes and printouts, as well

as all supporting documents as may be required by law.

(d) *Records retention.* All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than [] years.

(e) *Examination of records.* All of the foregoing records shall be made available for examination on request by the Executive Director [Department] [Commissioner] [Commission] [Board] or his [ITS] authorized representatives.

(f) *Failure of the taxpayer to maintain and disclose complete and adequate records.* Upon failure by the taxpayer, without reasonable cause, to substantially comply with the requirements of this regulation, the Executive Director [Department] [Commissioner] [Commission] [Board] shall:

- (1) Impose and not abate or reduce in amount any penalty as may be authorized by law.
- (2) Enter such other order which would be necessary to obtain compliance with this regulation in the future by any taxpayer found not be in substantial compliance with the requirements of this regulation.

Appendix E

Multistate Tax Commission Statement of Practices Under Public Law 86-272

Adopted July 11, 1986

Taxpayers and states alike have long suffered uncertainty as to when a taxpayer is subject to the jurisdiction of a state within the strictures of Public Law 86-272. While the law prohibits a state from applying its corporate income tax to a taxpayer who has minimal contacts with the state, it also establishes a standard by which a state from which a sale is made may determine whether the "throwback rule" applies. Any variation in the interpretation of that standard by either state can result in either overtaxation or undertaxation with respect to the taxpayer involved. The MTC states decided to try to resolve the problem for all concerned.

Toward that end, at the 1985 Annual Meeting, they adopted the following resolution:

Resolution Regarding Practices of Multistate Tax Commission States under Public Law 86-272

WHEREAS, it is in the interest of effective tax administration for tax administrators from time to time to examine their practices as to their application of nexus standards to out-of-state business organizations with respect to various state taxes; and

WHEREAS, the information regarding such practices, if made generally available to tax administrators, may result in increased uniformity in the states' practices with regard to various nexus issues; and

WHEREAS, the four primary goals of the Multistate Tax Compact are to (1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes; (2) promote uniformity or compatibility in significant components of tax systems; (3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration; and (4) avoid duplicative taxation; and

WHEREAS, the state members of the Commission have earlier reviewed their practices with regard to the application of nexus standards relating to sales and use taxation; and

WHEREAS, the state members of the Commission now believe that it is in the best interest of promoting the four primary goals of the Commission to describe generally their practices with regard to Public Law 86-272 and state income taxation; and

WHEREAS, the adoption of a document containing such information describing the states' practices under Public Law 86-272 is one method by which to make generally available such information relating to those practices;

NOW, THEREFORE, the Multistate Tax Commission hereby resolves that a document to be entitled "Information Concerning Practices of Multistate Tax Commission States Under Public Law 86-272" be published by the tax administrators of the Multistate Tax Commission states which impose a corporate income tax setting forth information concerning the practices of said states in applying Public Law 86-272 to various factual circumstances; and

BE IT FURTHER RESOLVED, that any member state, if it so desires, may accept, in whole or in part, said document and may otherwise dissent from any statements contained therein, so that said document shall best reflect the present practices of the states in applying Public Law 86-272; and

BE IT FURTHER RESOLVED, that said document be reviewed no less than once every three years by each of the signatory states to confirm that its statement of practice is accurate; and, if not, said state shall amend the document with regard to any such inaccuracy; and

BE IT FURTHER RESOLVED, that it is the intent of this Resolution: (1) that the contemplated document is to be informational only concerning each state's practices in regard to

Public Law 86-272 and is not to serve as a basis upon which any person may rely as to a nexus conclusion with respect to any particular set of factual circumstances; and (2) that that person should inquire of the particular state for information as to that state's position concerning that specific set of factual circumstances.

BE IT FURTHER RESOLVED, that the Uniformity Committee of the Multistate Tax Commission place upon its agenda the issue of whether to promulgate a uniform regulation in this regard to be proposed for adoption by the member states.

Dated this 21st day of June, 1985.
Multistate Tax Commission

Since that time, the MTC has developed an Information Statement aimed at clarifying state positions as to what activities do and what activities do not result in taxing jurisdiction under Public Law 86-272. At its 1986 Annual Meeting, the Commission approved a Resolution adopting a Statement of Information on the subject. Fifteen of the MTC's sixteen member corporate income tax states signed the Statement; and the sixteenth appears to be likely to apply the Statement in practice. Several other states have already indicated a willingness to do so; and, prior to the MTC's action, Wisconsin had already enacted a statute which substantially establishes the practices set forth in the Statement. Following is the text of the MTC Statement and of the Resolution adopting it:

Information Concerning Practices of Multistate Tax Commission States Under Public Law 86-272

Pursuant to Resolution 1985-4 adopted by the Multistate Tax Commission on June 21, 1985, a copy of which is attached hereto and incorporated by reference herein, the tax administrators of the following member states, by their signatures below, adopt this statement of "Information Concerning Practices of Multistate Tax Commission States under Public Law 86-272."

Public Law 86-272, 15 U.S.C. 381-385 (hereafter P.L. 86-272) restricts a state from impos-

ing a net income tax on income derived within its borders from interstate commerce if the only business activity of the taxpayer within the state consists of the solicitation of orders for sales of tangible personal property, which orders are to be sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. For the purposes of this document the term "net income tax" shall also include a franchise tax measured by net income. If any sales are made into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to the appropriate state which does have jurisdiction to impose its net income tax upon the income derived from those sales.

It is the policy of the state signatories hereto to impose their net income tax, subject to legislative limitations, to the fullest extent constitutionally permissible. Therefore, it is also the policy of those states to construe the provisions of P.L. 86-272 narrowly so as to apply that law to only those limited circumstances clearly and reasonably intended by Congress. The following information reflects the signatory states' current practices with regard to (1) whether a particular factual circumstance is considered either immune or not immune from taxation by reason of P.L. 86-272; and (2) the jurisdictional standards which will apply to sales made in another signatory state for purposes of applying a throwback rule (if applicable) with respect to such sales.

I Nature of Property Being Sold

Only the sale of tangible personal property is afforded immunity under P.L. 86-272. Therefore, the selling or providing of services, and the selling, leasing, renting, licensing or other disposition of real estate, personal property, intangibles or any other type of property are not immune from taxation by reason of P.L. 86-272. The definition of tangible personal property for this purpose is that to be found under each state's respective laws.

II

Solicitation of Orders

For the in-state activity to be immune, it must be limited solely to *solicitation* (except for that activity conducted by independent contractors described in Section III below). If there is any other activity unrelated to solicitation, the immunity shall be lost. Examples of activities presently treated by the signatory states (unless otherwise stated as an exception or addition) as either non-immune or immune are as follows:

A. Non-Immune Activities:

The following in-state activities will cause otherwise immune sales to lose their immunity:

1. Making repairs or providing maintenance.
2. Collecting delinquent accounts.
3. Investigating credit worthiness.
4. Installation or supervision of installation.
5. Conducting training courses, seminars or lectures.
6. Providing engineering functions.
7. Handling customer complaints.
8. Approving or accepting orders.
9. Repossessing property.
10. Securing deposits on sales.
11. Picking up or replacing damaged or returned property.
12. Hiring, training, or supervising personnel.
13. Providing shipping information and coordinating deliveries.
14. Maintaining sample or display room in excess of two weeks (14 days) during the tax year.
15. Carrying samples for sale, exchange or distribution in any manner for consideration or other value.
16. Owning, leasing, maintaining or otherwise using any of the following facilities or property in-state:
 - a. Repair shop.
 - b. Parts department.
 - c. Purchasing office.
 - d. Employment office.

- e. Warehouse.
- f. Meeting place for directors, officers, or employees.
- g. Stock of goods.
- h. Telephone answering service.
 - i. Mobile stores. *i.e.*, trucks with driver salesmen.
 - j. Real property or fixtures of any kind.

17. Consigning tangible personal property to any person, including an independent contractor.
18. Maintaining, by either an in-state or an out-of-state resident employee, of an office or place of business (in-home or otherwise).
19. Conducting any activity in addition to those described in paragraph II.B. below which is not an integral part of the solicitation of orders.

B. Immune Activities:

The following in-state activities will not cause the loss of immunity for otherwise immune sales:

1. Advertising campaigns incidental to missionary activities.
2. Carrying samples only for display or for distribution without charge or other consideration.
3. Owning or furnishing autos to salesmen.
4. Passing inquiries and complaints on to home office.
5. Incidental and minor advertising, *i.e.*, notice in newspaper that a salesman will be in town at a certain time.
6. Missionary sales activities.
7. Checking of customers' inventories (for re-order, but not for other purposes).
8. Maintaining sample or display room for two weeks (14 days) or less during the tax year.
9. Soliciting of sales by an in-state resident employee of the taxpayer; provided the employee maintains no in-state sales office or place of business (in-home or otherwise).

III Independent Contractors

P.L. 86-272 provides immunity to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the taxpayer directly. Independent contractors may engage in the following limited activities in the state without the taxpayer's loss of immunity:

1. Soliciting sales.
2. Making sales.
3. Maintaining a sales office.

Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as employees.

Maintenance of a stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the principal shall remove the immunity.

IV Miscellaneous Practices

A. Interstate Commerce.

The only activity in the state must be in interstate commerce. If there is any other activity (except that described in II.B. or otherwise incidental to solicitation), then the immunity shall be lost.

Requisites are:

1. Approval of the sales *must* be made outside the state (except for sales by independent contractors).
2. Deliveries *must* be made from a point outside the state.

B. Incorporated

The immunity afforded by P.L. 86-272 does not apply to any corporation incorporated within the taxing state.

C. Service vs. Sale

Sales of services are not immune under P.L. 86-272. If a sale consists of a mixture of tangible personal property and services, the immunity shall be lost. Examples of such mixture are:

1. Photographic development.
2. Fabrication of customer's materials.
3. Installation of equipment.
4. Architectural and engineering services.

Resolution re Adoption of Statement of Information Under Public Law 86-272

WHEREAS, since the adoption of Public Law 86-272 by the United States Congress, said law has been the subject of varied administrative and judicial interpretation; and

WHEREAS, in the interest of minimizing the need for such litigation and in order to provide the taxpaying community with a more uniform interpretation of Public Law 86-272 throughout the several states; and

WHEREAS, the Multistate Tax Commission member states have jointly agreed to the interpretation of Public Law 86-272 contained in the document entitled "Information Concerning Practices of the Multistate Tax Commission States Under Public Law 86-272" (attached hereto) and deem it sound state tax administration policy to provide the information contained therein to the taxpaying community.

NOW, THEREFORE, BE IT RESOLVED that the Multistate Tax Commission recommends to its member states to which Public Law 86-272 applies, as well as to those non-member states interested in doing so, that they adopt and publish said document so that the taxpaying community may be better informed as to the present practices of the states regarding their application of Public Law 86-272.

Appendix F

Update on Adoption of MTC Regulations

(Survey—Updated August, 1986)

State	Allocation & Apportionment		Railroad		Airline		Contractor	
	Formally	Informally	Formally	Informally	Formally	Informally	Formally	Informally
Alabama	No	No	No	No	No	No	No	No
Alaska	Yes		No	No	No	No	No	No
Arizona	Yes		No	No	No	No	No	No
Arkansas	Partially		No	No	No	No	No	No
California	Yes	No	No	Yes ¹	No	No	Yes	No
Colorado	Yes	No	Yes	No	No	No	Yes ¹	No
Connecticut	No	No	No	No	No	No	No	No
Delaware	No	No	No	No	No	No	No	No
District of Columbia	No	Partially	No	No	No	No	No	No
Florida	No	Yes ¹	No	No	No	No	No	No
Georgia	No	No	No	No	No	No	No	No
Hawaii	+	+	No	No	No	No	+	+
Idaho	Yes	No	Yes	No	Yes	No	Yes	No
Illinois	Partially	No	No	No	No	No	No	No
Indiana	No Response		No Response		No Response		No Response	
Iowa	No	No	No	No	No	No	No	No
Kansas	Yes	No	No	No	No	No	No	No
Kentucky	No	No	No	No	No	No	No	No
Louisiana	No	No	No	No	No	No	No	No
Maine	No	No	No	No	No	No	No	No
Maryland	No	No	No	No	No	No	No	No
Massachusetts	No	No	No	No	No	No	No	No
Michigan	No	Yes	No	No	No	No	No	No
Minnesota	Partially		Yes		No	No	No	No
Mississippi	No	No	No	No	No	No	No	No
Missouri	No	Yes	No	No	No	Yes	No	Yes
Montana	Yes	No	No	Yes	No	Yes	No	Yes
Nebraska	Yes	No	No	No	Yes	No	No	No
New Hampshire	No	Yes	No	No	No	No	No	No
New Jersey	No	No	No	No	No	No	No	No
New Mexico	Yes	No	No	Yes	No	Yes	No	Yes
New York	No	No	No	No	No	No	No	No
North Carolina	No	No	No	No	No	No	No	No
North Dakota	Yes	No	Yes	No	Yes	No	No	Yes
Ohio	No	No	No	No	No	No	No	No
Oklahoma	No	No	No	No	No	No	No	No
Oregon	Yes	No	Yes	No	Yes	No	Yes	No
Pennsylvania	No	No	No	No	No	No	No	No
Rhode Island	No	No	No	No	No	No	No	No
South Carolina	No	No	No	No	No	No	No	No
Tennessee	No	No	No	No	No	No	No	No
Utah	Yes	No	No	No	No	No ⁵	Yes	No
Vermont	No	No	No	No	No	No	No	No
Virginia	Partially	No	No	No	No	No	No	No
West Virginia	No	No	No	No	No	No	No	No
Wisconsin	No	No	No	No	No	No	No	No

NOTE: Nevada, South Dakota, Texas, Washington and Wyoming do not have a corporate income tax. Michigan has a single business tax which uses a formula that only partially takes income into account.

¹ Intend to adopt formally soon.

² Substantially same.

³ But double weights the sales factor.

⁴ Pub. hrg. held 12/12/83, no action yet.

⁵ Submitted for approval.

Appendix G

Uniform Division of Income for Tax Purposes Act (UDITPA) States¹

(Revised August, 1986)

Alabama ²	Georgia ⁷	Maine	New Mexico	South Carolina
Alaska ³	Hawaii ⁴	Massachusetts ¹⁰	North Carolina	Tennessee
Arizona	Idaho	Minnesota ^{4,11}	North Dakota	Utah ⁴
California	Illinois	Missouri ^{4,12}	Oklahoma ¹⁵	Virginia
Colorado ^{4,5}	Indiana ^{4,8}	Montana ⁴	Oregon	West Virginia ¹⁶
District of Columbia	Kansas	Nebraska ^{4,13}	Pennsylvania	Wisconsin
Florida ⁶	Kentucky ⁹	New Hampshire ¹⁴		

1. Some states have formally adopted UDITPA in full or in substantially complete form. Others have adopted statutory provisions in such a way as to accomplish substantially the same effect as formal adoption, e.g., Oklahoma, West Virginia and Wisconsin. At least one state, Alabama, has accomplished the same result via regulation.

2. Alabama's corporate income tax statute is vague on how the state is to determine what portion of a corporation's income is to be attributed to the state for tax purposes. On September 6, 1967, the Alabama legislature enacted the Multistate Tax Compact, which includes UDITPA, subject to congressional enactment of a Multistate Tax Compact consent bill. On September 12, 1967, the Alabama Department of Revenue promulgated regulations which adopt the UDITPA provisions as the basis upon which to determine the amount of a corporation's income which is attributable to the state.

3. Alaska applies special formulas to taxpayers engaged in the transportation of oil or gas by pipeline in Alaska and/or the production of oil or gas from a lease of property within Alaska.

4. This state adopted UDITPA by enacting the Multistate Tax Compact.

5. Colorado gives the taxpayer the option to use an alternative two-factor sales and property formula.

6. Florida enacted the Multistate Tax Compact in 1969. When it enacted its corporate income tax in 1971, it deleted UDITPA from its statutes. Yet, its corporate income tax statute is substantially in accord with UDITPA. Florida gives 50% weight to the sales factor.

7. Georgia's payroll and sales factors differ from those in UDITPA, but only slightly.

8. Indiana retained UDITPA when it withdrew from the Compact.

9. Kentucky gives 50% weight to the sales factor for tax years which begin after July 31, 1985.

10. Massachusetts is included as a UDITPA state because it closely follows the UDITPA apportionment formula. Massachusetts adopted the three-factor formula in 1920, and UDITPA codified that formula in 1957. However, UDITPA adopted destination (rather than source as used in Massachusetts) for sales, conditioned upon the seller's being subject to the taxing jurisdiction of the destination state. In 1966, Massachusetts changed to the destination basis, but subject to the current modification that no-nexus sales are Massachusetts sales if they are not sold by salesmen based in a third state. Unlike UDITPA, all income including intangible income, is includable in taxable net income with the exclusion of dividends received from corporations, but not from corporate trusts as defined in M.G.L.C. 62, Sect. 1 or from DISCs which are not wholly-owned DISCs, in which the receiving corporation owns 15% or more of the voting stock. Massachusetts gives 50% weight to sales on a destination-only basis.

11. Minnesota gives the taxpayer the option to use an alternative three-factor formula which gives 70% weight to sales on a destination-only basis.

12. Missouri gives the taxpayer the option of using an alternative single-factor formula in which 50% of sales are attributed on a destination basis and 50% on an origin basis.

13. Nebraska retained UDITPA after withdrawing from the Compact.

14. New Hampshire's property factor differs somewhat from UDITPA.

15. Oklahoma attributes income from oil, gas and lease operations on a "direct" basis.

16. West Virginia gives 50% weight to the sales factor for tax years ending after July 1, 1985.

Appendix H

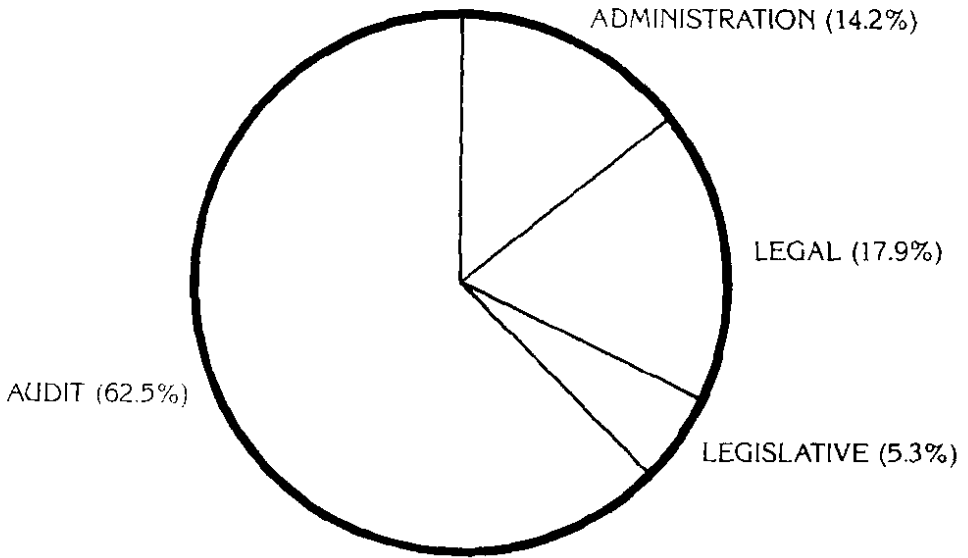
Multistate Tax Commission Compact Enactments

Member States	Effective Date	Withdrawal Date
Alaska	July 1, 1970	
Arkansas	January 1, 1968	
California	January 1, 1976	
Colorado	July 1, 1968	
District of Columbia	July 1, 1980	
Florida	August 4, 1967	June 30, 1976
Hawaii	May 7, 1968	
Idaho	April 10, 1968	
Illinois	August 4, 1967	August 29, 1975
Indiana	July 1, 1971	June 30, 1977
Kansas	August 4, 1967	
Michigan	July 1, 1970	
Minnesota	July 1, 1982	
Missouri	October 13, 1967	
Montana	July 1, 1969	
Nebraska	October 23, 1967	June 30, 1985
Nevada	August 4, 1967	June 30, 1981
New Mexico	August 4, 1967	
North Dakota	July 1, 1969	
Oregon	September 13, 1967	
South Dakota	July 1, 1976	
Texas	August 4, 1967	
Utah	May 13, 1969	
Washington	August 4, 1967	
West Virginia	July 1, 1980	June 30, 1985
Wyoming	January 24, 1969	May 27, 1977

Associate Member States	Effective Date	Withdrawal Date
Alabama*	October 17, 1967	
Alaska	June 7, 1968	To Full Member
Arizona	June 7, 1968	
Arkansas	October 17, 1967	To Full Member
California	January 23, 1968	To Full Member
Colorado	January 23, 1968	To Full Member
Georgia	June 11, 1971	
Hawaii	January 23, 1968	To Full Member
Idaho	October 17, 1967	To Full Member
Indiana	January 23, 1968	To Full Member
Louisiana	October 27, 1969	
Maryland	July 27, 1970	
Massachusetts	January 23, 1968	
Michigan	November 19, 1968	To Full Member
Minnesota	January 26, 1971	To Full Member
Montana	January 23, 1968	To Full Member

MTC EXPENSES

1985/1986



R
S
A
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CERTIFIED PUBLIC ACCOUNTANTS

Executive Committee
Multistate Tax Commission
Boulder, Colorado

We have examined the balance sheet of Multistate Tax Commission as of June 30, 1986 and 1985, and the related statements of revenues and expenses, changes in fund balance and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of Multistate Tax Commission at June 30, 1986 and 1985, and the results of its operations, changes in fund balance, and changes in financial position for the years then ended in conformity with generally accepted accounting principles applied on a consistent basis.

Rhode, Scripser & Associates

September 19, 1986

Appendix I

Multistate Tax Commission Balance Sheet

MULTISTATE TAX COMMISSION

BALANCE SHEET
June 30, 1986 and 1985

ASSETS

	<u>1986</u>	<u>1985</u>
CURRENT ASSETS		
Cash (including certificates of deposit of \$544,533 and \$304,000 in 1986 and 1985 respectively)	\$ 629,922	\$ 351,434
Accounts receivable--members	32,400	89,045
Accounts receivable--other	8	83,280
Accrued interest receivable	9,400	---
Receivable from termination of pension plan--Note 2	<u>239,523</u>	<u>---</u>
TOTAL CURRENT ASSETS.....	<u>970,253</u>	<u>523,759</u>
PROPERTY AND EQUIPMENT - Note 3		
Office furniture and equipment	242,003	235,491
Leasehold improvements	<u>2,235</u>	<u>2,235</u>
	244,238	237,726
Less: Accumulated depreciation and amortization	<u>144,026</u>	<u>91,286</u>
TOTAL PROPERTY AND EQUIPMENT.....	<u>100,212</u>	<u>146,440</u>
OTHER ASSETS		
Expense account advances	4,500	3,700
Deposits	2,696	2,696
Prepaid pension costs--Note 2	<u>---</u>	<u>69,098</u>
TOTAL OTHER ASSETS.....	<u>7,196</u>	<u>75,494</u>
TOTAL ASSETS.....	<u>\$1,077,681</u>	<u>\$ 745,693</u>

LIABILITIES AND FUND BALANCE

	<u>1986</u>	<u>1985</u>
CURRENT LIABILITIES		
Accounts payable	\$ 10,575	\$ 44,147
Accrued vacation pay	80,866	81,499
Payroll taxes payable	14,475	12,778
Deferred assessments and audit reimbursements	---	5,656
Current portion of long-term debt	<u>10,624</u>	<u>9,013</u>
TOTAL CURRENT LIABILITIES.....	<u>116,640</u>	<u>153,093</u>
LONG-TERM DEBT		
Note payable--Note 3	49,180	58,210
Less: Current portion	<u>10,624</u>	<u>9,013</u>
TOTAL LONG-TERM DEBT.....	<u>38,556</u>	<u>49,197</u>
FUND BALANCE--Exhibit B		
Unappropriated fund balance	804,769	525,402
Appropriated fund balance--Note 6	<u>117,716</u>	<u>18,301</u>
TOTAL FUND BALANCE.....	<u>922,485</u>	<u>543,403</u>
TOTAL LIABILITIES AND FUND BALANCE.....	<u>\$1,077,681</u>	<u>\$ 745,693</u>

See accompanying notes to financial statements.

MULTISTATE TAX COMMISSION

STATEMENT OF REVENUE AND EXPENSES

For the years ended June 30, 1986 and 1985

	<u>UNAPPROPRIATED FUNDS</u>	
	<u>1986</u>	<u>1985</u>
REVENUES		
Assessments	\$1,689,415	\$1,469,216
Interest	64,298	53,467
Other revenue:		
Legal administrative	25,000	25,000
Miscellaneous	2,112	---
Gain on sale of property and equipment	---	2,395
TOTAL REVENUE	<u>1,780,825</u>	<u>1,550,078</u>
EXPENSES		
Accounting	8,634	8,000
Bonds and insurance	5,281	4,989
Conferences	12,595	(1,291)
Consulting fees	112,850	134,331
Depreciation and amortization	52,720	41,900
Employee benefits	96,063	75,017
Interest expense	3,922	2,530
Legal and legal support	2,988	7,613
Miscellaneous	12,501	11,892
Office supplies	12,241	11,359
Pension plan and retirement provision	90,922	145,046
Postage	9,779	10,411
Printing and duplicating	17,523	21,559
Publications	12,809	9,188
Rent	98,937	82,827
Repairs and maintenance	10,565	5,953
Salaries	1,070,692	935,678
Telephone	27,894	27,464
Travel	73,072	61,378
Utilities	1,195	1,236
TOTAL EXPENSES	<u>1,731,883</u>	<u>1,597,080</u>
EXCESS (DEFICIENCY) OF REVENUE OVER EXPENSES BEFORE EXTRAORDINARY ITEM.....	<u>\$ 48,942</u>	<u>\$ (47,002)</u>
Extraordinary Item - Gain on termination of pension plan--Note 2	<u>230,425</u>	<u>---</u>
EXCESS (DEFICIENCY) OF REVENUE OVER EXPENSES	<u>\$ 279,367</u>	<u>\$ (47,002)</u>

See accompanying notes to financial statements.

MULTISTATE TAX COMMISSION
STATEMENT OF REVENUE AND EXPENSES
 For the years ended June 30, 1986 and 1985

APPROPRIATED FUNDS				
	Publications and Seminars	National Bellas Hess	Review Subscriptions	Total
1986				
REVENUES				
Publications & seminar sales	\$6,876	\$ ---	\$ ---	\$ 6,876
Contributions	---	97,520	---	97,520
Subscriptions	---	---	10,887	10,887
TOTAL REVENUE.....	<u>6,876</u>	<u>97,520</u>	<u>10,887</u>	<u>115,283</u>
EXPENSES				
Publications & seminars	7,260	---	---	7,260
Travel	---	476	---	476
Printing and postage	---	---	7,832	7,832
TOTAL EXPENSES.....	<u>7,260</u>	<u>476</u>	<u>7,832</u>	<u>15,568</u>
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENSES.....	<u>\$ (384)</u>	<u>\$97,044</u>	<u>\$ 3,055</u>	<u>\$ 99,715</u>
1985				
REVENUES				
Publications & seminar sales....	<u>\$1,213</u>	\$ ---	\$ ---	<u>\$ 1,213</u>
EXPENSES				
Publications & seminar sales....	<u>300</u>	---	---	<u>300</u>
EXCESS OF REVENUES OVER EXPENSES.....	<u>\$ 913</u>	<u>\$ ---</u>	<u>\$ ---</u>	<u>\$ 913</u>

See accompanying notes to financial statements.

Exhibit D

MULTISTATE TAX COMMISSION
STATEMENT OF CHANGES IN FUND BALANCE
 For the years ended June 30, 1986 and 1985

	Unappropriated Fund Balance		Appropriated Fund Balance	
	1986	1985	1986	1985
FUND BALANCE--Beginning of year	\$525,402	\$572,404	\$ 18,001	\$17,088
Excess (deficiency) of revenue over expenses--Exhibits B and C	<u>279,367</u>	<u>(47,002)</u>	<u>99,715</u>	<u>913</u>
FUND BALANCE--End of year	<u>\$804,769</u>	<u>\$525,402</u>	<u>\$117,716</u>	<u>\$18,001</u>

See accompanying notes to financial statements.

MULTISTATE TAX COMMISSION

STATEMENT OF CHANGES IN FINANCIAL POSITION
For the years ended June 30, 1986 and 1985

	<u>1986</u>	<u>1985</u>
WORKING CAPITAL PROVIDED BY:		
Operations:		
Excess (deficiency) of revenue over expenses before extraordinary item	\$148,657	\$ (46,089)
Add: Charges not requiring the use of working capital:		
Depreciation and amortization	52,720	41,900
Gain on sale of property and equipment	---	(2,395)
Working Capital provided by (used in) operations before extraordinary item	201,377	(6,584)
Extraordinary Item	230,425	---
Working Capital provided by (used in) operations	431,802	(6,584)
Proceeds from issuance of long-term debt	---	58,210
Decrease in expense account advances	---	2,300
Proceeds from sale of property and equipment	---	23,962
Decrease in prepaid pension costs	69,098	---
TOTAL PROVIDED	<u>500,900</u>	<u>77,888</u>
WORKING CAPITAL APPLIED TO:		
Purchase of property and equipment	6,512	109,028
Increase in expense account advances	800	---
Increase in deposits	---	1,000
Payment and reclassification of long-term debt	10,641	32,047
TOTAL APPLIED	<u>17,953</u>	<u>142,075</u>
INCREASE (DECREASE) IN WORKING CAPITAL	<u>\$482,947</u>	<u>\$ (64,187)</u>
CHANGES IN WORKING CAPITAL COMPONENTS		
Increase (decrease) in current assets:		
Cash	\$278,488	\$ (49,565)
Accounts receivable--members	(56,645)	13,553
Accounts receivable--other	(83,272)	20,843
Accrued interest receivable	8,400	(1,012)
Receivable from termination of pension plan	299,523	---
	<u>446,494</u>	<u>(16,181)</u>
Decrease (increase) in current liabilities:		
Accounts payable	33,472	(24,615)
Accrued vacation pay	633	(13,390)
Payroll taxes payable	(1,697)	(1,875)
Deferred assessments and audit reimbursements	5,656	(5,656)
Current portion of long-term debt	(1,611)	(2,470)
	<u>36,453</u>	<u>(48,006)</u>
INCREASE (DECREASE) IN WORKING CAPITAL	<u>\$482,947</u>	<u>\$ (64,187)</u>

See accompanying notes to financial statements.

MULTISTATE TAX COMMISSION

NOTES TO FINANCIAL STATEMENTS

June 30, 1986

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Multistate Tax Commission was organized in 1967. It was established under the Multistate Tax Compact, which by its terms, became effective August 4, 1967. The basic objective of the "Compact" and, accordingly, the Commission is to provide solutions and additional facilities for dealing with state taxing problems related to multi-state business.

Method of Accounting

The Commission follows the accrual method of accounting whereby assessment revenue is recognized in the fiscal year of assessment. Contributions by states for specific purposes are recognized as income during the year of receipt. Other revenue is recognized as it is earned. Expenses are recognized as they are incurred.

Property and Equipment

All property and equipment is stated at cost and depreciated using straight-line and accelerated methods over the estimated useful lives of the assets which range from 3 to 8 years.

NOTE 2 - PENSION PLAN

The Commission had a defined benefit pension plan covering substantially all of its employees. The total pension expense for the years ended June 30, 1986 and 1985 was \$90,922 and \$145,046, respectively. The Commission's policy is to fund pension costs as accrued. Effective June 30, 1986, the Commission terminated the defined benefit pension plan and adopted a defined contribution plan to be funded at a rate of twelve percent of each vested individual's annual salary. The actuarial value of the plan's assets as of June 30, 1986 was \$1,235,696, which exceeded the lump sum benefits payable of \$936,173 by \$299,523. Because \$69,098 had previously been recognized as a prepaid pension cost, the extraordinary gain on the termination of the defined benefit pension plan was \$230,425. The entire amount of the overpayment will be refunded to the Commission.

MULTISTATE TAX COMMISSION

NOTES TO FINANCIAL STATEMENTS (Continued)
June 30, 1986

NOTE 3 - NOTE PAYABLE

Note payable at June 30, 1986 was as follows:

	<u>Current</u>	<u>Long-Term</u>	<u>Total</u>
Manufacturer--7.9% installment note, collateralized by related equipment, payable in monthly installments of \$1,177.47, including interest, with final payment due July, 1990.	\$ 10,624	\$ 38,556	<u>\$ 49,180</u>

The minimum scheduled note payments remaining at June 30, 1986 are as follows:

<u>Fiscal Year Ended</u>	
1987	\$ 14,130
1988	14,130
1989	14,130
1990	14,130
1991	<u>1,176</u>
Total note payments	57,606
Interest included in payments	<u>(8,516)</u>
TOTAL	<u>\$ 49,180</u>

NOTE 4 - COMMITMENTS

The Commission rents its primary office facilities in Boulder, Colorado, and other office facilities in New York and Illinois under lease agreements with terms expiring on various dates through September 30, 1991. These leases provide for the following minimum annual rentals exclusive of utility charges and certain escalation charges:

<u>Fiscal Year Ended</u>	<u>Minimum Annual Rental</u>
June 30, 1987	\$ 93,512
June 30, 1988	98,307
June 30, 1989	87,094
June 30, 1990	53,050
June 30, 1991	49,724
Subsequent years	<u>12,431</u>
TOTAL	<u>\$394,118</u>

The leases include certain escalation charges based on various factors including wage index, utility, operating and property tax increases from a base year. Rent expense for the year ended June 30, 1986 and 1985 was \$98,937 and \$82,827, respectively.

MULTISTATE TAX COMMISSION

NOTES TO FINANCIAL STATEMENTS (Continued)
June 30, 1986

NOTE 5 - INCOME TAXES

In the opinion of legal counsel, the Commission is exempt from Federal income taxes as well as from other Federal taxes as an organization of a group of States or as an instrumentality of those States. Therefore, no provision has been made in the financial statements for Federal income taxes.

NOTE 6 - APPROPRIATED FUND BALANCE

In 1991, the Executive Committee of the Multistate Tax Commission established a revolving fund financed through the net income from publications and seminars to be used to promote additional seminars and publications of additional works. During the year ended June 30, 1986, the Executive Committee set up the National Bellas Hess and the review subscription revolving funds. The net income generated from the National Bellas Hess program is to be used to support education, lobbying and legal expenses related to the National Bellas Hess case. The net proceeds from the review subscriptions are to be used to cover future printing and postage costs of the publication.