FINAL REPORT OF THE HEARING OFFICERS

regarding the proposed

Provision for the Collection of Tax on Fundraising Transactions

This Final Report contains the Hearing Officers' recommendations regarding the Uniformity Committee's proposed provision for the Collection of Tax on Fundraising Transactions. In accordance with the requirements of the Multistate Tax Commission's hearing process set forth in Article VII of the Multistate Tax Compact[1] and Bylaw No. 7 of the Multistate Tax Commission ("MTC" or "Commission"), the Hearing Officers submit, for the consideration of the Executive Committee, this report containing a synopsis of the hearing proceedings and a recommendation for Commission action. Pursuant to Bylaw No. 7, the report must be submitted to the MTC Executive Committee prior to the initiation of a survey of the Member States of the Commission. The survey of MTC Member States will determine whether a majority of them would consider the adoption of the proposal as an MTC recommendation.

The MTC Executive Committee may accept, reject, or modify the Hearing Officers' recommendations or it may take any other action that it deems appropriate, including authorizing another hearing. In any event, before referring any uniformity recommendation to the full Commission, a Bylaw No. 7 survey of the MTC States will be conducted. If a majority of the interested Member States agree to consider the proposal for adoption, then, at its next meeting after the survey, the full Commission will vote on whether to adopt the proposal as a recommendation by the MTC to the States. If the Commission adopts the proposal, there is no requirement that the States adopt the recommended provision. The States individually choose whether or not they will adopt the proposal through their individual administrative or legislative process. As required in the hearing process, the Hearing Officers' Final Report sets forth the full text of the proposal and includes an explanation of the proposal and the related issues. [The full text of the proposal is attached to this Final Report as *Exhibit A*.]

By way of background, this proposal is an outcome of the joint work of the MTC Uniformity Committee and the Association of Fund Raisers and Direct Sellers (AFRDS). In January 1999, the MTC Executive Committee referred this proposal to a public hearing. The proposal establishes that a nonprofit or charitable organization (as defined under each state's law) that sells products as part of its fundraising activities will not have the responsibility of collecting and remitting sales tax on those transactions that may be subject to sales tax. From the perspective of AFRDS, the primary purpose of this proposal is to place the obligation for sales tax collection on sales for fundraising purposes on the wholesaler/distributor of the fundraising products, and not on the organization conducting the fundraising event.

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[1] The Multistate Tax Compact is the authorizing and governing statute of the Multistate Tax Commission.

The proposal requires the wholesaler or distributor to register as a vendor. The effect of this proposal is to exempt from the sales tax the fundraising transaction between the fundraising organization and the ultimate consumer. The taxable price under the proposal is the wholesale price of the product. Purchases made by a nonprofit or charitable organization of tangible personal property to be sold for fundraising are not to be treated as sales for resale requiring the issuance of a resale exemption certificate. Finally, the provision does not apply where all sales made by certain organizations are exempt from sales tax under existing state law or where certain products are already exempt from sales tax either generally or when sold for fundraising purposes.

Pursuant to notice, a copy of which is attached as *Exhibit B,* the Hearing Officers conducted a public hearing on this proposal on Friday, October 29, 1999 in the Hall of the States Building in Washington, D.C. The Hearing Officers received one written comment during the hearing process, which is attached as *Exhibit C.* The commentator expressed the view that the proposal would impose a new burden on exempt organizations in her state, in that any sale by or to a qualified exempt organization is currently exempt in that state. This comment is based upon a misreading of the proposal, in that the proposal is limited to any nonprofit or charitable organization making taxable sales. During the hearing, the Hearing Officers received testimony from AFRDS in support of the adoption of the proposal. The AFRDS testimony reiterated its previous written statement regarding the purpose of the proposal. A copy of the statement is attached as *Exhibit D.*

The Hearing Officers recommend that the Executive Committee approve the proposed provision for the collection of tax on fundraising transactions without change and authorize staff to conduct a Bylaw 7 survey of the affected states.

EXHIBIT A

Proposed Provision for the
Collection of Tax on Fundraising Transactions

A. Any nonprofit or charitable organization [*as defined under the State's applicable provisions, which may refer to IRC 501(c)(3), educational, religious or other specific orgranizations*] making taxable sales of tangible personal property for fundraising shall not be required to collect and remit sales tax due on such sales, provided the wholesaler or distributor is registered with this State as a vendor.

B. Purchases made by a nonprofit or charitable organization of tangible personal property to be sold for fundraising are not to be treated as sales for resale requiring the issuance of a resale exemption certificate.

C. If a nonprofit or charitable organization purchases tangible personal property from a wholesaler or distributor for resale for other than fundraising, the nonprofit or charitable organization must register as a vendor with the State and collect tax on its sales of tangible personal property for other than fundraising. The nonprofit or charitable organization must also provide a resale exemption certificate for these purchases to discharge the obligation of the wholesaler or distributor for collecting and remitting a sales tax on the purchases by the nonprofit or charitable organization.

D. The wholesaler or distributor of tangible personal property to a nonprofit or charitable organization making sales of the tangible personal property for fundraising shall collect and remit the sales tax measured by the selling price of such tangible personal property to the nonprofit or charitable organization. The wholesaler or distributor shall register as a vendor in this State and shall file a return and remit the total amount of taxes collected under this section [*in accordance with the collection/payment provisions of the State sales/use tax act*].

E. As used in this section:

1. "Wholesaler or distributor" means any person engaged in the sale of tangible personal property to a nonprofit or charitable organization that purchases the tangible personal property for fundraising.

2. "Fundraising" shall refer to the irregular or intermittent sale [*as defined by applicable State provisions*] by a nonprofit or charitable organization of tangible personal property for the purpose of obtaining funds from the public for the benefit of the organized purpose of the organization, provided fundraising does not include the sale of tangible personal property by a nonprofit or charitable organization in an unrelated trade, business or activity. Sales of tangible personal property by a nonprofit or charitable organization offered exclusively to its members and not to the general public shall not be considered fundraising under this provision.

F. Examples.

1. Boy Scout Troop A purchases twice in one year, candy, nuts and other items from Wholesaler/Distributor to be sold to the public to raise funds for an annual camping trip. Troop A is a nonprofit organization and does not sell candy in an unrelated trade, business or activity. Under this section, Wholesaler/Distributor Manufacturer is required to collect tax on the items sold to Troop A based on the sales price to Troop A. Troop A is not required to collect sales tax on the sales made to the public.

2. A nonprofit fraternal organization located in State A ocassionally purchases from T-Shirt Company clothing imprinted with the organization's emblem to be sold to interested members. The sales to the members would not be considered fundraising sales. The fraternal organization would be required to collect and remit sales tax on the sales made to its members and provide a resale exemption certificate to T-Shirt Company. If the fraternal organization does not provide a resale exemption certificate, T-Shirt Company must collect the use tax due on the goods sold to the organization.

EXHIBIT B

NOTICE OF PUBLIC HEARING

regarding a

PROPOSED PROVISION FOR THE COLLECTION OF TAX ON FUNDRAISING TRANSACTIONS

The MULTISTATE TAX COMMISSION ("MTC") has scheduled a public hearing to obtain comments from interested parties on a proposed provision for the collection of sales tax on fundraising transactions in the states. This proposed provision for the collection of tax on fundraising transactions, which contemplates implementation by uniform legislation or regulation, was developed jointly by the Association of Fund Raisers and Direct Sellers and the MTC Uniformity Committee.

The hearing on this proposal will be held at the following location on the date and at the time specified below:

FRIDAY, OCTOBER 29, 1999, 2:30 P.M. (EASTERN)
Hall of the States Building
444 North Capitol Street, N.W., Suite 383
Washington, DC 20001-1538

Public comment is sought on all pertinent matters regarding whether the MTC should recommend adoption of the proposal, but with particular attention to two issues: one, the shifting of the collection duty from the retailer to the wholesaler; and two, the tax base being measured by the wholesale sales price rather than the retail sales price. The text of the proposal has been provided with this notice. (The proposal and this notice are available on the MTC's website at www.mtc.gov). General comments about the proposal as well as comments regarding the specific language of the provisions are encouraged.

All comments received as part of the hearing process will be set forth in a hearing officers' report that will be submitted to the MTC Executive Committee. The MTC Executive Committee will consider the proposal for appropriate action. *See* The Multistate Tax Commission's Uniformity Recommendation Development Process at step seven, available at www.mtc.gov/uniform/9steps.htm

The hearing officers for this matter are Sheldon Laskin and H. Beau Baez. Please submit all questions, comments and correspondence regarding this hearing matter to: Hearing Officer Sheldon Laskin, Multistate Tax Commission, 444 N. Capitol Street, N.W., Suite 425, Washington, D.C. 20001-1538, Phone: (202) 624-8699, Fax: (202) 624-8819, E-mail: slaskin@mtc.gov

All interested parties are invited to participate in this public hearing. Parties wishing to make formal oral presentations are requested to notify the hearing officers in writing at least two (2) working days prior to the hearing date. Written comments are acceptable and encouraged. They may be submitted at any time prior to or on the hearing date or by such later date as may be announced for the closing of the public hearing period. Interested parties may participate by telephone. Please contact either hearing officer for specific instructions on how to connect by telephone.

EXHIBIT C

State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
PO Box 269
TRENTON NJ 08646-0269

RECEIVED
OCT 18 1999
MTC

CHRISTINE TODD WHITMAN
Governor

JAMES A. DIELEUTERIO, JR.
State Treasurer
In reply respond to:

609-292-5995

To:	MTC Executive Committee
From:	Denise M. Lambert, Tax Services Specialist, Tax Services Branch
Re:	Proposed Provision for Collection of Tax on Fundraising Transactions
Date:	10/13/99

Under New Jersey law, any sale **by or to** a qualified exempt organization (IRC Section 501(c)(3) organizations; volunteer fire, rescue, ambulance, first aid squads; parent-teacher organizations) is exempt from sales tax where such sale is directly related to the purpose for which the entity has been organized. N.J.S.A. 54:32B-9(b) In administering this provision, the Division does not require an exempt organization to either pay tax on purchases or collect tax on sales made during fundraising events or activities which are of short duration and are not held on a regular basis. If the exempt organization is engaged in a trade or business in substantial competition with non-exempt businesses, they are required to collect tax on those sales.

Thus, the proposed provision would not merely shift the burden of collecting tax, but rather, would impose a new tax burden on exempt organizations. A change of this magnitude would require legislative action to amend the statutory exempt organization provision; due to the nature of such organizations, it is doubtful that such legislation would have support in New Jersey.

The tax collection treatment in the proposal reflects the way the Division currently administers the law for non-profits that do **not** qualify for exemption under New Jersey law. For example, the Division would allow a school group such as a Parent's Booster Club to pay sales tax when they purchase tangible property to be sold for fundraising purposes and do not require that they collect sales tax upon the sale of such property. If the property was purchased from a non-registered vendor, the Booster Club would have a use tax obligation.

In conclusion, if the proposed rule were applicable only to non-profits <u>other than</u> entities named in the New Jersey Sales & Use Tax Act (IRC Section 501(c)(3) organizations; volunteer fire, rescue, ambulance, first aid squads; parent-teacher organizations), the Division could support the rule.

EXHIBIT D

Statement of the Association of Fund Raisers and Direct Sellers (AFRDS) regarding purpose of the Proposed Provision for the Collection of Tax on Fundraising Transactions

Current Situation

The application of transactional taxes on fundraising varies widely from state to state. In some states, sales by nonprofit organizations for fundraising purposes are exempt entirely. In other states the transactions are exempt depending on certain factors; for example, the type of items sold (e.g., food vs. hard goods), the duration of the fundraiser, the total amounts raised, the type of nonprofit group (PTAs vs PTOs), and the number of fundraisers held over a given period of time. The basis for the tax also varies (retail vs. wholesale), as does the responsibility for collecting the tax (nonprofit group vs. the fundraising distributor company). These wide varying procedures were confirmed in a survey of the States conducted by the MTC in 1996.

Frequently, nonprofits often are not aware they may have a tax liability with respect to product fundraising sales. In some cases, the distributor companies collect and remit tax even though the nonprofit technically has the statutory responsibility. Distributor companies frequently get conflicting advice or interpretations from representatives of state departments of revenue. Enforcing tax liabilities on nonprofit groups is rare. Enforcing such liabilities on fundraising companies, generally speaking, is uneven.

Uniform Procedures

The attached draft procedures were prepared jointly by AFRDS and MTC and are *intended only for those states where fundraising sales are not already exempt.* For states that currently tax fundraising sales, the intent of the uniform procedures will be to:

1. Relieve nonprofit groups of the burden of collecting sales tax;
2. Clarify tax collection responsibilities of fundraising distributors;
3. Ease the states' administrative burden.

Rationale.

The fundraising industry's fundamental position is that fundraising sales by nonprofit organizations should not be taxable as these are self-help efforts aimed at the goals for the organization. Also, these fundraising activities reduce the tax burden on taxpayers. For states that tax these transactions, the industry believes that the tax should be based on the transaction between the Distributor and the nonprofit group, not the net profits achieved by nonprofits from fundraising sales. According to the industry, taxing on the retail transaction would be 1) unfair (these are self-help initiatives that further the causes of nonprofits and frequently, as in the case of public schools, are undertaken because of a lack of state funding); and 2) impractical since Distributors will be asked to collect a tax based on sale prices that it cannot control. For those states where fundraising is taxable, members of the AFRDS have expressed a willingness to accept the burden of collecting the tax on fundraising sales *provided that the tax is based on the amount paid to the distributor by the nonprofit group*.

Due to the many factors (e.g., the variety of different fundraising programs, the thousands of products that can be sold for fundraising, and the involvement of tax-exempt organizations) taxing product fundraising and effectively collecting those revenues can be a complex matter. Consequently, several states (including recently Washington State) have determined that enforcing such tax obligations is not worth the effort required. For those states that continue to tax fundraising, the proposed uniform procedures will help the states avoid political and practical problems associated with collecting tax from schools and other tax exempt organizations. Further, the clarified procedures will allow for more compliance on the part of fundraising distributors, many of whom frequently are not aware of or do not understand their obligations. Consequently, states may realize increrased revenues while devoting fewer resources.

State Adoption of the Procedures.

Adopting this proposal could involve regulatory, legislative or other procedures, depending on the state. Consequently, we propose that the uniform procedures be presented in the form of a recommended MTC policy, leaving states to determine the best course of action for adoption.