



MULTISTATE TAX COMMISSION

To: MTC Uniformity Standing Subcommittee

From: Maria Sanders, Chair
Helen Hecht, Uniformity Counsel

Subject: Inaugural Meeting – Report (Agenda Items III, IV & V)

Date: September 17, 2020

At this initial meeting, the standing subcommittee may wish to consider the process they will use (monthly meetings, webpage, etc.) and also kick off the search for potential new projects. (See Agenda Items III, IV & V.)

III. Review of New Project Selection Process

(See below – also available on the Subcommittee’s webpage, here: <http://www.mtc.gov/Uniformity/Standing-Subcommittee>).

Uniformity Project Selection Process Adopted by the MTC Uniformity Committee – July 2020

1. The Commission staff will regularly solicit and otherwise identify potential new projects and make a report to the committee at each regular meeting (three times per year).
2. The Uniformity Committee will establish a Standing Subcommittee that meets regularly throughout the year to evaluate potential new projects as directed by the committee.
3. At each regular meeting or other meeting called for the purpose of selecting a new project, the Uniformity Committee will consider the staff report of proposed new projects, take any additional input, and decide whether to decline the proposed project, undertake the project, or assign the project to the Standing Subcommittee for further study. If the Uniformity Committee decides time is of the essence, or for any other reason, it may decide to initiate a new project without assigning it to the Standing Subcommittee.
4. The Uniformity Committee will adopt a set of general criteria for use in discussing and evaluating proposed projects which may include, among other things, whether the proposed project:

- a. Falls within the Commission's general expertise and mission, that is, state taxes on multistate businesses and related issues.
 - b. Builds on existing models or work done previously.
 - c. Addresses a pervasive issue affecting a number of states or taxpayers.
 - d. Would produce a model law to address an emerging issue.
 - e. Would produce a uniform law, and if so, how difficult it would be for states to change any existing laws.
 - f. Would require legislation or could be accomplished by agency action.
 - g. Would likely have political support or opposition.
5. The Standing Subcommittee will study projects as assigned by the Uniformity Committee and may direct staff to gather data, survey the states or the public, do basic analysis of the potential issues, etc.
 6. The Standing Subcommittee will produce a report for the Uniformity Committee summarizing its recommendations on the proposed projects assigned. The report will reflect any analysis of the issues, and the evaluation of the relevant criteria, and will also set out the proposed scope of the project—including specific issues to be addressed and the type of work to be done or product produced, including one or more of the following:
 - a. Holding discussions of the issue by interested states and the public.
 - b. Providing analysis of the issue and possible solutions.
 - c. Surveying the states for alternative approaches.
 - d. Considering best practices and making general recommendations.
 - e. Drafting model provisions including alternatives.
 - f. Drafting a model law.
 - g. Drafting a uniform law.
 7. The Uniformity Committee will consider the recommendations of the Standing Subcommittee and make decisions as to which projects to prioritize and will maintain a list of those projects—which may be revised from time to time. The committee may use a ranking system for the purpose.
 8. Commission staff will report at each meeting on the availability of resources to undertake work on new projects and on the status of projects assigned so that the Uniformity Committee can initiate new projects when necessary.
 9. The Uniformity Committee may initiate a project to be done by the committee as a whole, by a work group, or by staff (as directed by the committee). When the Uniformity Committee initiates a new project to be assigned to a work group or to staff, the committee will outline the work to be done or product to be produced, the issues to be addressed, a timeline for the work, and other necessary direction.
 10. As always, the Uniformity Committee may terminate a project if it determines that the criteria recommending that project are no longer met.



This new project selection process, designed to be iterative, involves the subcommittee in:

- Soliciting and identifying new projects,
- Studying those potential projects as directed by the uniformity committee, and
- Producing a report on its analysis of potential projects assigned with recommendations for the uniformity committee.

In the future, the Uniformity Committee may assign issues or potential projects to the standing subcommittee. The subcommittee may wish to meet regularly and may also want to consider the type of information that will be collected and archived on the MTC website, here: <http://www.mtc.gov/Uniformity/Standing-Subcommittee>.

IV. Staff Report on Developments Affecting Uniformity

This is the report that will periodically go to the Uniformity Committee. We would expect that a draft of this report be shared with the subcommittee for input from its members. The proposed format of the report would be as follows:

- Legislative and regulatory developments in the area of taxes on multistate businesses – actions by states to address issues that the MTC has adopted models to address or may want to consider addressing.
- Litigation or audit issues that might benefit from legislative or regulatory changes.
- Other developments that could affect state taxation of multistate business activities—including developments affecting existing models.

EXAMPLE of the developments report:

Legislative and Regulatory Developments

Market-Based Sourcing: States continue to adopt market-based sourcing. Six have done so in the last two years (CO, IN, NC, NM, NJ, and VT). In addition to this being relevant for corporate income taxes, it is also essential for gross receipts taxes, which are increasingly being considered by state and local governments.

The issues where additional guidance might be helpful include:

- Sourcing of digital advertising revenues – or the methods for reasonable approximation;



- Sourcing/treatment of rebates or fees, particularly where there are complex multi-level marketing or distribution arrangements (e.g. digital content, pharmaceuticals, etc.); or
- Updating special industry rules—particularly broadcasting and publishing—to take into account issues in digital media.

Factor Presence Nexus: Roughly a dozen or so states have some type of sales-factor (at least) threshold but often it is not clear whether this is instead of or in addition to physical presence. (Our model does not create this uncertainty since it also has minimal payroll and property thresholds.) Some have suggested that the factor presence model might need to be updated.

Litigation or Audit Issues

Partnership/RAR and Audit Issues: States are moving to adopt provisions that will allow them to assess state tax on federal partnership audit adjustments. (The MTC currently has a work group that continues to address issues in this area.) Some states have also been looking at state-level partnership audits using an approach similar to the federal approach. (See Georgia's recent enactment and the system that Pennsylvania has had for some time.) States might benefit from sharing best practices in this area.

Other Developments

Business Interest: The question of how should states that conform to IRC §163(j) do so in the context of combined filing or separate filing continues to be raised. The IRS has issued guidance, as have a few states. This may be an issue where pulling together the existing guidance and highlighting the issues would be sufficient.

V. Discussion of Potential New Projects

As this is the initial meeting of the subcommittee, we also begin the process of seeking input from the subcommittee members or members of the public on potential new projects—or sources of potential projects which staff can begin to review. Staff would also welcome any suggestions on other methods or processes for identifying new projects.