Multistate Tax Commission

PUBLIC NOTICE AND AGENDA

Teleconference Meeting
of
Task Force C of Multistate Tax Commission Public Participation Working Group
on
Definitions of Business/Non-Business Income and of a Unitary Business

September 25, 1997, 11:00 AM Eastern Time

The Multistate Tax Commission (MTC) announces the scheduling of a teleconference meeting of "Task Force C" of its "Public Participation Working Group" (hereafter, PPWG) on Definitions of Business/Non-Business Income and of a Unitary Business. The PPWG is a joint State-business-public advisory body to the MTC charged with reviewing two draft uniformity recommendations to the States that the MTC has under development. Task Force C is a subsidiary body of the PPWG assigned the responsibility of reviewing discrete issues identified by the PPWG that would benefit from intensive examination by a smaller group.

The Task Force has scheduled a teleconference meeting on September 25, 1997, at 11:00 AM Eastern Time. The teleconference is open to the public, and, as required by the MTC's public participation policy, an opportunity for public comment will be provided. Members of the public and Task Force C members may participate in the teleconference meeting at the MTC's headquarters office at Suite 425, 444 N. Capitol Street, Washington, DC. Alternatively, members of the public and Task Force C members may participate in the teleconference by calling the Access Teleconference Service at 703-736-7307 (long distance telephone charges are the responsibility of the caller). Inform the Access operator that you are participating in the Multistate Tax Commission Task Force meeting and that your moderator is Paull Mines. No one from the public connecting to the teleconference or participating at the Commission's headquarters office who only wishes to observe need identify themselves (although they may elect to do so). The initial PPWG drafts of the two uniformity proposals are available as Adobe Acrobat ".pdf" files at the MTC's World Wide Web site on the Internet (address or "URL": http://www.mtc.gov/uniform/projlist.htm). They may also be requested from the Publications Coordinator at the MTC headquarters office, telephone 202-624-8699.

Agenda:

I. Welcome and roll-call

II. Public comment period

III. Discussion of issue 1: the definition/test(s) for a unitary business, emphasizing the basic test without totally negating the "three unities" test and the "contribution/dependency" test[1]

IV. Discussion of issue 2: treatment of expenses[2]

V. Plans for future meetings

VI. Adjournment

For more information concerning this meeting, please contact Michael Mazerov, Multistate Tax Commission, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. Phone: 202-624-8699; e-mail: mmazerov@mtc.gov.

[1] Task Force C Members and other interested persons are requested to submit, on or before September 15, 1997, to Michael Mazerov (at the address indicated in this notice) their proposed language in reaction to the proposal of John Warren dated July 7, 1997. (This latter document may also be obtained from Michael Mazerov). This deadline has been established to provide all participants with an opportunity to react to any proposed language.

[2] This agenda item is based upon language prepared by Richard Pomp that was distributed at the August PPWG meeting in Whitefish, Montana (a copy of which is attached). This second agenda item is a contingent item of discussion which will only occur if time permits.

The Matching of Expenditures with Income

(Prepared by Richard Pomp and distributed at the PPWG meeting in Whitefish, Montana, on August 6, 1997)

Unless all of a corporation's taxable income is either apportionable by, or allocable to, the taxing state, an issue arises regarding the treatment of deductions. A corporation must determine which of its expenditures are properly matched with the production of its apportionable income and thus deductible in calculating apportionable taxable income, and which are properly matched with the production of its allocable income and thus deductible in calculating its allocable taxable income.

(Of course, if an expenditure is incurred in generating income that a state does not tax, no deduction should be allowed at all. This principle is embodied in both state and federal law.)

Similar issues arise if a corporation is carrying on more than one unitary business. In that case, it becomes necessary to match an expenditure with the income of the appropriate unitary business.

Developing a detailed set of guidelines for dealing with this issue is outside the scope of our project. But a flagging of the issue seems appropriate. Besides looking to the rules that the various states have developed, the states might want to examine the federal rules. The Internal Revenue Code must distinguish between expenditures that generate U.S source gross income and those that generate foreign source gross income. A foreign corporation is taxable only on its U.S. source taxable income; to the extent that an expenditure is properly matched with U.S. source gross income, the corporation's U.S. tax will be reduced. For a U.S corporation, the amount of the credit for foreign income taxes is a function of the amount of its foreign source income. To the extent that an expenditure is properly matched to foreign source gross income, the amount of the credit will be reduced, which will increase the amount of its U.S. tax. For the rules on matching expenditures with U.S. or foreign source income, which can serve as guidance for the states, see Treas. Reg. § 1.861-8.