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August 12, 1997

Multistate Tax Commission
Attn: Paull Mines, General Counsel
444 Capitol Street, N.W.
Suite 425
Washington, D.C. 20001

Re: Public Participation Working Group on Definition of a Unitary Business and
Business/Non-Business Income

Dear Paull:

I notice that the overall goal of the group was said to be to create either statutory or regulatory definitions. My advice is to think big and go for statutory change. I have four suggestions.

First, I agree with whoever suggested utilizing the Supreme Court's conceptualization of the unitary business issue, with the possible exception of some considerable fleshing out on the investment/operational distinction. The Court has resolved most of the big conceptual issues, so the concerns now mostly relate to applying the rules to specific cases. If another case ever reaches the Supreme Court, you can bet that the Court will resort to its conceptualization, so the rest of us might as well do it too.

Second, if at all possible, let us change the business/non-business issue to the apportionable/non-apportionable issue.

Third, I would like to see the terminology changed to allocation being the description for the spreading of income among states, with the two methods of doing that being apportionment and assignment (with the latter replacing the current use of allocable).

Fourth, why not ask Rick Pomp, or someone, to take a crack at revising UDITPA and submitting the product for PPWG consideration? If a promising draft were produced, the Uniform Law Commissioners could be asked to sponsor a formal effort.

Very truly yours,

John P. James

Partner Multistate Tax Services

cc: Kendall Houghton

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