

# Multistate Tax Commission



## PUBLIC NOTICE AND AGENDAS

**Teleconference Meetings  
of  
Task Forces of Multistate Tax Commission Public Participation Working Groups  
on  
A Sales and Use Tax Nexus Guideline  
and  
Definitions of Business and Non-Business Income and of a Unitary Business**

**Various Dates and Times, July 1997**

The Multistate Tax Commission (MTC) announces the scheduling of teleconference meetings of "Task Forces" of its two current "Public Participation Working Groups" (hereafter, PPWGs). The PPWGs are joint State-business-public advisory bodies to the MTC charged with reviewing three draft uniformity recommendations to the States that the MTC has under development. These recommendations deal with constitutional nexus for sales and use tax purposes, the definitions of business and non-business income, and the definition of a unitary business. The "Task Forces" are subsidiary bodies of the PPWGs assigned the responsibility of reviewing discrete issues identified by the PPWGs that would benefit from intensive examination by a smaller group. Four Task Forces have been formed under the PPWG reviewing the sales and use tax nexus guideline. Three Task Forces have been formed under the PPWG reviewing the definitions of business and non-business income and a unitary business.

The Task Forces have scheduled teleconference meetings at the dates and times shown below to discuss the matters detailed in the indicated agendas. These teleconferences are 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 may participate in these teleconference meetings at the MTC's headquarters office at Suite 425, 444 N. Capitol Street, Washington, DC. Alternatively, members of the public may participate in the teleconferences 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 teleconferences or participating at the Commission's headquarters office need identify themselves, although they may elect to do so. The initial PPWG drafts of the three 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. In coming weeks, a section will be added to the Web site devoted to the PPWGs and the Task Forces.

**PUBLIC PARTICIPATION WORKING GROUP  
ON  
DEFINITIONS OF A UNITARY BUSINESS AND BUSINESS/NON-BUSINESS INCOME**

**Task Force A Teleconference Meetings**

July 8, 1997, 10:00 AM Eastern Daylight Time

July 22, 1997, 10:00 AM Eastern Daylight Time

**Agenda:**

- I. Welcome and roll-call
- II. Public comment period
- III. Discussion of issue 1: the definition/test(s) for business and non-business income
- IV. Discussion of issue 2: the application of the unitary business principle definition to diverse businesses
- V. Plans for future meetings
- VI. Adjournment

**Task Force B Teleconference Meetings**

July 10, 1997, 2:00 PM Eastern Daylight Time

July 24, 1997, 2:00 PM Eastern Daylight Time

**Agenda:**

- I. Welcome and roll-call
- II. Public comment period
- III. Discussion of issue 1: the use of presumptions
- IV. Discussion of issue 2: holding companies and pass-through entities
- V. Discussion of issue 3: instant unity
- VI. Discussion of issue 4: unity of ownership
- VII. Plans for future meetings
- VIII. Adjournment

**Task Force C Teleconference Meetings**

July 17, 1997, 11:00 AM Eastern Daylight Time

July 24, 1997, 11:00 AM Eastern Daylight Time

**Agenda:**

- I. Welcome and roll-call
- II. Public comment period
- III. Discussion of issue 1: the definition/test(s) of unitary business
- IV. Discussion of issue 2: treatment of expenses
- V. Discussion of issue 3: correlation of business income with the property factor
- VI. Discussion of issue 4: the definition/test(s) of non-business income
- VII. Plans for future meetings
- VIII. Adjournment

**PUBLIC PARTICIPATION WORKING GROUP  
ON THE  
SALES AND USE TAX NEXUS GUIDELINE**

**Task Force I Teleconference Meetings**

July 8, 1997, 1:00 PM Eastern Daylight Time

July 15, 1997, 1:00 PM Eastern Daylight Time

**Agenda:**

- I. Welcome and roll-call
- II. Public comment period
- III. Discussion of issue 1: whether the "purposeful availment" due process standard for *in personam* jurisdiction properly applies to sales and use tax jurisdiction (II.A.3.b. of the Draft Sales and Use Tax Nexus Guideline)
- IV. Discussion of issue 2: how does the "regular and systematic solicitation" standard relate to the "purposeful availment" standard? (II.A.3.b. and II.A.3.c. of the Draft Sales and Use Tax Nexus Guideline)
- V. Discussion of issue 3: how is the concept of "de minimis" properly to be applied, including the burden of proof issue? (II.A.3.a., II.B.3.a. and II.D. of the Draft Sales and Use Tax Nexus Guideline)
- VI. Plans for future meetings
- VII. Adjournment

**Task Force II Teleconference Meetings**

July 9, 1997, 1:00 PM Eastern Daylight Time

July 16, 1997, 1:00 PM Eastern Daylight Time

**Agenda:**

- I. Welcome and roll-call
- II. Public comment period
- III. Discussion of issue 1: Is the due process nexus standard always satisfied for sales tax purposes by establishing that the sale has occurred within the taxing state? (II.A.1. of the Draft Sales and Use Tax Nexus Guideline)

- IV. Discussion of issue 2: Is the commerce clause nexus standard always satisfied for sales tax purposes by establishing that the sale has occurred within the taxing state? (II.B.1. of the Draft Sales and Use Tax Nexus Guideline)
- V. Discussion of issue 3: Does indirect ownership of a property interest in the taxing state give rise to "physical presence?" (II.C.2. and II.C.3. of the Draft Sales and Use Tax Nexus Guideline)
- VI. Plans for future meetings
- VII. Adjournment

### **Task Force III Teleconference Meetings**

July 7, 1997, 2:00 PM Eastern Daylight Time

July 14, 1997, 2:00 PM Eastern Daylight Time

#### **Agenda:**

- I. Welcome and roll-call
- II. Public comment period
- III. Discussion of issue 1: What is the proper definition for "common carrier?" (II.F.2. of the Draft Sales and Use Tax Nexus Guideline)
- IV. Discussion of issue 2: How do you reconcile the concept of "physical presence" with the safe harbor established by National Bellas Hess? (II.B.3.b. of the Draft Sales and Use Tax Nexus Guideline)
- V. Discussion of issue 3: Should nexus-creating activities arising from the temporary presence of employees in the taxing state be limited by the "market enhancement" concept? (II.C.1.(b) of the Draft Sales and Use Tax Nexus Guideline)
- VI. Discussion of issue 4: Should nexus-creating activities arising from the presence of representatives (other than employees) or property of representatives in the taxing state be limited by the "market enhancement" concept? (II.C.5. and 6. of the Draft Sales and Use Tax Nexus Guideline)
- VII. Discussion of issue 5: What are the proper definitions for terms such as "permanent," "temporary," and "ability to establish and maintain the market" found throughout the draft Guideline? (II.C.1., 5., 6., 8., and II.F. and 9., for example, of the Draft Sales and Use Tax Nexus Guideline)
- VIII. Plans for future meetings
- IX. Adjournment

**Task Force IV Teleconference Meetings**

July 9, 1997, 3:00 PM Eastern Daylight Time

July 15, 1997, 3:00 PM Eastern Daylight Time

**Agenda:**

- I. Welcome and roll-call
- II. Public comment period
- III. Discussion of issue 1: What effect on a determination of nexus should there be for the out-of-state business having any of the following interests in property located within the taxing state: a. A security interest? b. A lease related interest? c. A consignment related interest? (II.C.3. of the Draft Sales and Use Tax Nexus Guideline)
- IV. Discussion of issue 2: What is the proper definition of the term "representative" and what are the implications for nexus for the use by an out-of-state seller of an independent representative in the taxing state? (II.A.3.b., II.A.3.c., II.C.5., 6., 8., 9., and II.F. 12., for example, of the Draft Sales and Use Tax Nexus Guideline)
- V. Discussion of issue 3: What should be the proper duration of liability once sufficient nexus contacts arise? (II.E. of the Draft Sales and Use Tax Nexus Guideline)
- VI. Plans for future meetings
- VII. Adjournment

For more information concerning these meetings, 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](mailto:mmazerov@mtc.gov).