



MULTISTATE TAX COMMISSION

Report of the Uniformity Committee

Tommy Hoyt (Texas), Chair

In the fiscal year ending June 30, 2019, the Uniformity Committee had three in-person meetings—July 24, 2018, at the Commission’s Annual Meeting in Boston, Massachusetts; November 7, 2018, in Orlando, Florida; and April 25, 2019, in Denver, Colorado.

During the year, Holly Coon, Alabama, stepped down from the chair’s role to become director of the Commission’s Joint Audit Program. Tommy Hoyt, Texas, the vice chair, took over the duties of chair and Maria Sanders, Missouri, agreed to take on the role of vice chair.

In July, the committee formed two work groups to take on two new projects. The first was drafting a model option for combined filing under *Finnigan* (the *Finnigan*-combined filing work group). Phil Skinner, Idaho, has been leading that group. The second was a project recommending requirements for the implementation of marketplace facilitator collection and remittance following *Wayfair* (the *Wayfair* implementation work group). Tommy Hoyt agreed to lead that group.

At its July meeting, the Commission’s Executive Committee also referred back to this committee the proposed Model Sales and Use Tax Notice and Information Reporting Statute. That model has not been taken up again by the committee.

In November, the committee considered the white paper produced by the *Wayfair* implementation work group, recommending best practices focusing primarily on imposing tax collection obligations on marketplace providers. After discussing that white paper, the committee voted to ask the Executive Committee that it be published and disseminated to the states which that committee agreed to do. We are gratified to see that states are generally looking to the recommendations in that white paper in enacting marketplace provider collection statutes.

In November, the committee also voted to commence a project and create a work group to update the Commission’s statement on P.L. 86-272 (the P.L. 86-272 work group). Holly Coon had also been leading that group and Laurie McEllhatton, California, has agreed to take over that leadership role.

In November, the Executive Committee heard the Hearing Officer’s Report on the Model Uniform Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments (the revised RAR model statute). That model was referred to the Commission and was approved in a special meeting of the Commission held for that purpose on January 24, 2019.

In April, the committee received updates from the two project work groups and asked the staff of the Commission to survey the states and determine if there are emerging issues with the implementation of *Wayfair* or marketplace collection statutes and to report back at the committee meetings held this week.

The projects completed by the committee in the 2018-2019 fiscal year include the revised RAR model statute and the *Wayfair* white paper. The status of current uniformity projects is summarized below.

Project/Work Groups	
Sales and Use Tax Notice/Information Reporting Model	
Chair and Staff	N/A
Background	A public hearing on this model was held, but soon after, the U.S. Supreme Court issued its decision in <i>Wayfair</i> , holding states could impose collection and remittance requirements on remote sellers. The hearing officer, therefore, recommended that the model again be referred back to the Uniformity Committee for consideration of whether it would be necessary in light of <i>Wayfair</i> .
Status	The Uniformity Committee has not taken any action on this model.
Finnigan-Combined Filing Work Group	
Chair and Staff	Phil Skinner, Idaho; Bruce Fort and Helen Hecht, MTC Staff
Scope of Project	This work group has been tasked with creating a model “ <i>Finnigan</i> ” alternative in addition to the “ <i>Joyce</i> ” approach already in the Commission’s Model Statute for Combined Reporting.
Background	At its April 2018 meeting, the committee was asked to consider adding a “ <i>Finnigan</i> ” option in the Commission’s Model Statute for Combined Reporting, which currently uses the “ <i>Joyce</i> ” approach. Commission staff produced a briefing book on the issue. The question at the center of the <i>Joyce/Finnigan</i> debate is: Are states limited in their ability to tax an apportioned share of the income of a unitary business conducted by multiple legal entities if some portion of that income might be attributed to an entity over which the state lacks taxing jurisdiction? States have generally been moving toward the <i>Finnigan</i> approach—which allows the state to tax the unitary business without regard to whether it has jurisdiction over one or more entities making up that business. At its July 2018 meeting, the committee voted to take on the project and created a work group to draft the model option.
Status	The work group has held bi-weekly meetings and has a draft model for discussion. The work group has recently been focusing on the treatment of NOLs in the group return and this issue has delayed finishing the model.

P.L. 86-272 Work Group	
<i>Chair and Staff</i>	Laurie McEllhatton, California, and Brian Hamer, MTC staff
<i>Scope of Project</i>	This work group is tasked with updating the Commission's Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272.
<i>Background</i>	The statement was last updated in 2001 and does not contemplate many activities regularly undertaken by businesses today, including selling goods over the Internet.
<i>Status</i>	The work group is holding bi-weekly meetings and work is ongoing. The work group is hoping to have a revised statement for the Uniformity Committee to review by the November 2019 meeting.