



Uniformity Committee Report to the Executive Committee November 17, 2017

Holly Coon (Alabama), Chair
Tommy Hoyt (Texas), Vice Chair

The Uniformity Committee will have met twice in person this year: in Louisville, KY, at the 2017 Annual Meeting, and in New Orleans on November 16. Any updates to this report from the November 16 meeting will be given orally.

There are three work groups working on uniformity projects as summarized below.

Project Work Groups	
Sales and Use Tax Information Reporting Model Work Group	
<i>Chair and Staff</i>	Phil Horwitz (Colorado) and Sheldon Laskin
<i>Scope of Project</i>	The Uniformity Committee has asked the work group to recommend revisions to a draft model statute that requires non-collecting sellers and others to: (1) give notice to in-state purchasers, with each sale, that tax may be owed; (2) give a report to in-state purchasers, annually, summarizing purchases made; and (3) file an information return with the state, annually, listing in-state purchasers and total purchases.
<i>Background</i>	This committee previously referred the draft model statute to a public hearing and a Bylaw 7 survey. When it failed to pass the Bylaw 7 survey, the committee referred the draft model statute back to the Uniformity Committee for clarification. Those clarifications were submitted in May, 2012, but the draft was tabled pending a decision in <i>Direct Marketing Ass'n v. Brohl</i> , which involved a similar Colorado statute. After the Tenth Circuit upheld the Colorado statute and the U.S. Supreme Court denied certiorari (see <i>Direct Marketing Ass'n v. Brohl</i> , 814 F.3d 1129 (2016)), this committee referred the draft model statute back to the Uniformity Committee for its recommendation. That committee convened a work group to consider any necessary revisions and it began its review in June, 2017 with weekly calls in which a number of states and members of the public have participated.
<i>Status</i>	The work group expects to submit a revised draft model to the Uniformity Committee for discussion and approval at the November 16, 2017 meeting. The work group will be giving a report on the revisions to the Executive Committee under a separate agenda item.

Section 18 Regulation Work Group	
<i>Chair and Staff</i>	Holly Coon (Alabama) and Bruce Fort
<i>Scope of Project</i>	Recommend any new or amended model regulations under Compact, Art. IV (UDITPA) Section 18 that may be required by the Commission’s adoption of recommended changes to Art. IV in 2014 and 2015.
<i>Background</i>	Following the Commission’s adoption of recommended changes to the Compact, Art. IV (UDTIPA), this committee recognized the need for new or amended model regulations and asked the Uniformity Committee to undertake the drafting of those regulations. The first projects assigned to work groups involved the amendments to the Model General Allocation and Apportionment Regulations, Section 1 and Section 17. Those work groups also identified issues to be addressed under Section 18 and in early 2016, the Uniformity Committee established a Section 18 work group for this purpose. The group has been having weekly meetings for over a year.
<i>Status</i>	<ul style="list-style-type: none"> • <u>Special Rules – Receipts Factor</u>: The work group has focused its efforts to date on “special purpose” corporate entities that would lack a receipts factor under changes adopted by the Commission because certain categories of gross receipts would not be included in the factor. The categories of gross receipts covered by the rule include dividends, interest, capital gains and losses, receipts from factoring accounts receivable, other gross receipts from investment activity, and certain other gross receipts. The proposed regulations would be included in subsection IV.18.(c) of the Model General Allocation and Apportionment Regulations. • <u>Receipts Factor – Bank Holding Companies and Subsidiaries</u>: Based on public comments submitted at the Uniformity Committee meeting in August of this year, the work group has also taken up consideration of a special industry regulation for financial institution holding companies and subsidiaries that may be engaged in banking and related activities. The proposed regulation is intended to provide guidance that the receipts of such entities should be apportioned under the state’s rules applicable to financial institutions, if any, or under the MTC model rules for financial institutions, and not using the receipts factor under the proposed model regulation IV.18.(c). • The work group expects to submit a both proposed draft models to the Uniformity Committee for discussion and approval at the November 16, 2017 meeting.

Partnership/RAR Project Work Group	
<i>Chair and Staff</i>	Tracee Abel (Montana) and Helen Hecht
<i>Scope of Project</i>	<p>Recommend: (1) model provisions that states may need in order to assess the additional tax due as a result of federal audit adjustments made under new statutory requirements for entity-level audits of large partnerships; (2) provisions necessary for the entity-level assessment of taxes; and (3) revisions to the Commission’s existing model for Reporting Federal Tax Adjustments.</p> <p>NOTE: This project is subject to certain time constraints because we expect that state legislatures will want to begin considering the necessary changes to state statutes in the upcoming 2018 legislative sessions.</p>
<i>Background</i>	<p>In 2015, Congress passed the Bipartisan Budget Act which requires the IRS to conduct entity-level audits of large partnerships and assess the partnership, unless the partnership elects to do the administrative work of “pushing out” the audit adjustments to its partners. The Uniformity Committee initially established an informational project in 2016 to study these federal changes. Later, it determined that a work group should be established to draft model provisions that states may need in order to assess the additional tax that will result from any federal partnership audit adjustments.</p> <p>The Uniformity Committee was also approached by “Interested Parties” (ABA, AICPA, COST, TEI, & IPT) asking that the committee consider changes to its existing model for Reporting Federal Tax Adjustments. The Committee was separately asked to consider any related issues that states would need to address in assessing state tax at the entity level. The Committee agreed to both of these requests. It also agreed that the working group should use a draft of proposed language put forward by the Interested Parties as its starting point and prioritize the partnership-related provisions.</p>
<i>Status</i>	<p>The work group has held bi-weekly meetings in which the Interested Parties have participated and have made substantial contributions. In August, the work group approved comments to be submitted to the IRS on proposed federal regulations. The work group also agreed that the chair and staff should have an in-person meeting with the Interested Parties to clarify the understanding of how the federal process is expected to work, and what that would mean for the states. Subsequent to that meeting, the Interested Parties submitted a substantially revised draft for consideration. After review of that draft and based on input received from the work group, MTC staff made recommendations as to changes that may need to be considered. The Interested Parties have asked for time to consider those changes.</p>