



MULTISTATE TAX COMMISSION

Rosen Centre Hotel  
9840 International Drive  
Orlando, Florida 32819

## Uniformity Committee Report to the Executive Committee November 8, 2018

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

The uniformity committee previously met on July 24, 2018, at the MTC's Annual Meeting in Boston, MA, and will meet again on November 7, 2018. Any updates to this report from the November meeting will be given orally.

In July, the committee formed two work groups to take on two new projects—drafting a model option for combined filing under *Finnigan* and recommending *Wayfair* implementation/marketplace facilitator collection and remittance requirements. At its July meeting, this committee also referred back to the uniformity committee the proposed model Sales and Use Tax Notice and Information Reporting Statute.

The status of Uniformity projects is summarized below.

Project/Work Groups	
Sales and Use Tax Notice/Information Reporting Model	
<i>Chair and Staff</i>	See status below.
<i>Background</i>	After the decision in <i>Direct Marketing Ass'n v. Brohl</i> , 814 F.3d 1129 (2016)), in which a similar statute in Colorado was upheld, this committee referred the draft model statute the uniformity committee had created back to the committee for any additional recommendations. The model was eventually revised and the uniformity committee recommended that revised version be considered by this committee, which, in turn, asked the executive director to hold a public hearing. That hearing 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 if <i>Wayfair</i> .
<i>Status</i>	The uniformity committee is expected to discuss whether to retain the proposed model for further consideration or refer it back to the executive committee with recommended action.

<b>Wayfair Implementation and Marketplace Facilitator Work Group</b>	
<b><i>Chair and Staff</i></b>	Tommy Hoyt, Texas, Richard Cram, MTC Staff
<b><i>Scope of Project</i></b>	This work group was established to discuss and develop best practices for certain aspects of <i>Wayfair</i> implementation, especially imposing collection and remittance duties on marketplace facilitators.
<b><i>Background</i></b>	At the uniformity committee’s July 24, 2018 meeting, MTC staff gave a presentation identifying a number of issues left open in the wake of <i>Wayfair</i> . The committee received suggestions that the MTC focus on addressing treatment of marketplaces and identify other issues on which states may wish to look for consistent administrative policies.
<b><i>Status</i></b>	The work group has held weekly meetings in which a number of taxpayer representatives, marketplaces, and certified service providers have participated and have made substantial contributions. The group is expected to present a white paper at the uniformity committee meeting on November 7.
<b>Model Option for Combined Filing Under <i>Finnigan</i> – Work Group</b>	
<b><i>Chair and Staff</i></b>	Phil Skinner, Idaho, Bruce Fort, MTC Staff
<b><i>Scope of Project</i></b>	This work group has been tasked with creating a model “Finnigan” alternative in addition to the “Joyce” approach already in the Commission’s Model Statute for Combined Reporting.
<b><i>Background</i></b>	At its April, 2018 meeting, the committee was asked to consider adding a “Finnigan” option in the Commission’s Model Statute for Combined Reporting, which currently uses the “Joyce” approach. MTC staff produced a briefing book on the issue. The question at the center of the Joyce/Finnigan 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 Uniformity Committee voted to take on the project and created a work group to draft the model option.
<b><i>Status</i></b>	The work group has held bi-weekly meetings and is currently in the research and discussion phase. MTC staff identified state statutes implementing the <i>Finnigan</i> approach, and the work group is considering the benefits and drawbacks of these existing approaches.