



MULTISTATE TAX COMMISSION

**To: Julie Magee, Commission Chair
Members of the Commission**

**From: Wood Miller, Uniformity Committee Chair
Richard Cram, Sales & Use Tax Uniformity Subcommittee Chair
Robynn Wilson, Income & Franchise Tax Uniformity Subcommittee Chair**

Re: Uniformity Committee Report for First Quarter of Fiscal Year 2015

Date: December 12, 2014

The commission develops model state tax laws for states to consider adopting. Proposed model laws may be suggested by our executive committee, a standing committee, a single state, a taxpayer, taxpayer groups, or any other member of the public. Once members have identified a model to develop, initial drafting takes place in our subcommittees. The subcommittees appoint work groups and drafting groups, as needed. All committee, subcommittee, work group and drafting group meetings and teleconferences are public and public participation is encouraged.

Through the first quarter of this fiscal year, the committee and subcommittees have met once in person, during the July annual meeting in Albuquerque, New Mexico. Drafting groups and work groups have met regularly by teleconference.

Projects by Status

Currently before the Commission:

Revisions to the model Multistate Tax Compact Art. IV – Revisions to Sec. 18 and Conforming Amendments approved by the states in Bylaw 7 survey.

Currently before the Executive Committee:

1. Hearing Officer's Report on Proposed Draft Amendments to Formula for the Apportionment and Allocation of Net Income of Financial Institutions
2. Sales and Use Tax Nexus Model Statute (if timely)
3. Resolution on ABA Transaction Tax Overpayment Act
4. Model Sales and Use Tax Notice and Reporting Statute

Under Development or Consideration at the Uniformity Committee and Subcommittees:

Uniformity Committee

1. UDITPA Sec. 1 Work Group – "Receipts"
2. UDITPA Sec. 17 Work Group – Model Market-Sourcing Regulations

Income & Franchise Tax

1. Project on Use of Trusts for State Tax Avoidance
2. Strategic Planning

Sales & Use Tax

1. Sales and Use Tax Nexus Model Statute
2. Model Provisions Concerning Class Action and False Claims
3. Marketplace Fairness Act Model Uniform Language.

Project Summaries

Before the Commission

Revisions to the model Multistate Tax Compact Art. IV – Revisions to Sec. 18 and Conforming Amendments approved by the states in Bylaw 7 survey.

At the meeting of the Executive Committee held July 31, 2014 in Albuquerque, New Mexico, proposed revisions to Art. IV of the model Compact were discussed and approved in a form by the Committee for recommendation to the Commission, triggering the Bylaw 7 survey of the member states. Staff of the MTC conducted that survey. A majority of the states responded that they would consider the proposed revisions, and that result was reported to the Commission Chair. The proposed revisions are therefore now on the agenda for the next Commission meeting.

Before the Executive Committee

1. Hearing Officer's Report on Proposed Draft Amendments to Formula for the Apportionment and Allocation of Net Income of Financial Institutions

The Hearing officer report is separately on the agenda for discussion by the Executive Committee.

2. Sales and Use Tax Nexus Model Statute (if timely)

A Memorandum and Proposed Model may be presented to the Executive Committee if the Uniformity Committee completes its work.

3. Resolution on ABA Transaction Tax Overpayment Act

The Uniformity Committee has approved a resolution expressing support for the ABA Model Transaction Tax Overpayment Act.

4. Model Sales and Use Tax Notice and Reporting Statute

This project is on hold pending the constitutional challenge to the Colorado use tax information reporting statute. That litigation, *Direct Marketing Association v. Brohl*, is pending before the U.S. Supreme Court and in the Colorado district court. The Supreme Court will decide only whether the case can be brought in federal court or whether such a suit is barred by the federal Tax Injunction Act. The merits of the case are not before the Supreme Court. If the state wins before the Supreme Court, then the case on the merits will proceed in the state district court. If the state loses before the Supreme Court, then the case would presumably go back to the Tenth Circuit for a decision on the merits. The

federal district court granted a permanent injunction against the state's enforcement of the information reporting requirements on Commerce Clause grounds. The state district court granted an injunction pending the Supreme Court's decision.

Under Development or Consideration at the Uniformity Committee

1. UDITPA Sec. 1 Work Group – "Receipts"

Work on regulations to implement changes to Sec. 1(g) of Art. IV of the model Compact was begun November 6, 2014 and is continuing. The work group consists of Donnita Wald, North Dakota; Steve Wynn, Idaho; Joseph DiNicola, Oregon; Jennifer Hays, Kentucky; and Scott Fryer, Arkansas. The work group has had several meetings.

2. UDITPA Sec. 17 Work Group – Model Market-Sourcing Regulations

Work on regulations to implement changes to Sec. 17 of Art. IV of the model Compact was begun November 5, 2014 and is continuing. The work group consists of Chris Coffman, Washington; Phil Skinner, Idaho; Michael Fatale, Massachusetts; Aishah Hashmi, District of Columbia; Jeffrey Henderson, Oregon; Holly Coon, Alabama, and Ben Miller. The work group will meet by phone weekly until the project is completed.

Income & Franchise Tax Uniformity Subcommittee

1. Project on Use of Trusts for State Tax Avoidance

Work on a project to evaluate the use of trusts for state tax avoidance and the possible solutions addressing trust residency was begun September 18, 2014 and is ongoing. The work group consists of Phil Horwitz, Colorado; Leonore Heavey, Louisiana; Richard Cram, Kansas; Holly Coon, Alabama; and Chelsea Kidney, Idaho.

2. Strategic Planning

The commission's strategic planning committee has identified four strategic goal areas — areas in which MTC must focus in order to achieve its vision. One of these areas relates to the uniformity process:

Uniformity – Our goal is to increase uniformity in tax policy and administrative practices among the states. Achievement of the MTC's uniformity goal will be reflected by:

- Greater adoption of uniformity recommendations by state and local tax jurisdictions.
- Uniformity projects will have the greatest value to the states and stakeholders.
- More multistate tax issues will be referred first to the MTC for recommendation or resolution by the states, taxpayers and the federal government.

At its July 2012 meeting, the income & franchise tax uniformity subcommittee began considering the current uniformity process: how projects are currently chosen; the current development process and how long it generally takes for each step, from initiation to commission approval; how a project's progress is planned, communicated, and tracked; how the finished product is made accessible to states and the public for consideration; and tools for tracking or recording progress of all current and completed projects. The goal was to get a better understanding of the current process and possible improvements.

At its March 2013 meeting, the subcommittee reviewed proposed improvements to the uniformity process web pages and recommended that those changes be made. The strategic planning committee then asked the uniformity committee for recommendations on another project to undertake. The subcommittee suggested that it look into why uniformity recommendations are not more widely adopted. The strategic planning committee approved that proposal in July 2013. A uniformity work group was assigned to collect background information, analyze the information, and propose possible solutions. The team has surveyed states to identify the current rate of adoption for 11 models. The next step is to interview agency staff to understand why those models were or were not adopted in the states.

At the December 2013, meeting, the strategic planning work group outlined its plans to contact states regarding their adoption of uniformity provisions. The work group has now completed those interviews and compiled a list of the factors that influenced the states' decisions to adopt or not adopt certain MTC models. The work group discussed these findings with the Income & Franchise Tax Subcommittee in Denver on March 12. The work group has reached two tentative conclusions. First, political considerations are often the primary factor affecting whether MTC models are adopted by states. Second, it seems that MTC models are sometimes developed despite the fact that many states will not act on them (either the model doesn't apply to the state or the state already has addressed the issue). The work group met on April 30, 2014, and decided to recommend that the Uniformity Committee consider a project to design a front-end information and survey process so that projects that are approved for drafting have a higher potential for adoption by the states.

At the July 2014 meeting, the strategic planning work group reported on additional evaluation of past projects. Discussion at that meeting focused on the process for adopting new projects and the criteria the group might want to use to prioritize one project over another. In order to reduce opposition to MTC projects, the committee recommended that the Uniformity Committee should not take up projects that have little or no interest; and, that the Uniformity Committee should better engage stakeholders – by getting more public input.

Sales & Use Tax Uniformity Subcommittee

1. Model Remote Seller Nexus Statute

A first draft of a proposed New York style “associate nexus” statute was presented during the uniformity committee teleconference in October, 2011. That draft largely followed so-called “Amazon” legislation first adopted in New York. A second draft was prepared for the July 2012 meeting that also largely followed the New York legislation and included aspects of the similar legislation adopted by California. The subcommittee has benefited considerably from comments and input by representatives from New York and California. The subcommittee held a teleconference in October, 2012 which resulted in a third draft incorporating elements of the MTC affiliate nexus statute. This draft was reviewed and discussed during the December 2012 meeting. During that meeting, the subcommittee voted to expand the project to create a model sales and use tax nexus statute. A work group was formed that reviewed nexus research, developed a policy checklist, and identified state legislation that could serve as a template for the model. The workgroup met several times in 2013. At the subcommittee's meetings in March, July and December 2013, the subcommittee reviewed the drafts prepared by the workgroup and returned them with suggested amendments. At its March 2014 meeting, the subcommittee reviewed the draft prepared by the workgroup and sent it back to the workgroup for further revisions. The draft

prepared by the work group and approved by the subcommittee was presented to the Uniformity Committee at its meeting July 2014. Additional changes were recommended regarding the model statute, which was returned to the work group. The work group presented its revised model to the subcommittee at the December 2014 meeting.

2. Model Provisions Concerning Class Actions and False Claims

This project was originally requested by the telecommunications industry. Industry representatives gave a presentation in July 2012 on issues arising from class actions for alleged over collection of tax from communications customers. In December, 2012, after hearing input from COST and others, the project was expanded to include all industries, not just communications, and to include a look at false claims acts actions for alleged under collection of tax. The project now encompasses exploring ways to protect retailers from lawsuits in both under and over collection situations. The subcommittee met with the litigation committee in February, 2013, to review a class action model recommended by the American Bar Association. In March, 2013, the subcommittee directed staff to provide an overview of state laws on class action and false claims acts in the state tax context. That research was reviewed by the subcommittee at its July 2013 meeting. An industry-state work group was formed. The workgroup focused on nuisance lawsuits, and in April 2014 the subcommittee considered a resolution endorsing the ABA Model Transactional Tax Overpayment Act. The subcommittee referred the resolution back to staff for further drafting. The draft resolution, as amended, was referred to the subcommittee, which then referred the draft to the committee. The draft was approved by the committee and recommended the proposed resolution be referred to the Executive Committee for adoption. The work group will now focus on issues arising from class actions for alleged under collection of transaction tax.

3. Marketplace Fairness Act Model Uniform Language.

This project began in July of 2013, but was put on hold in March of 2014. It remains on hold. The Marketplace Fairness Act (MFA) has stalled in the House, with a number of Representatives expressing intent to edit the bill or draft their own version. Pending an indication of what the House intends to do with the bill, the group is limited in its options. The group had an update call on November 12, 2014, but there was no news to report. MTC staff continues to monitor the bill, and the group will reconvene if there are any developments.