



To: MTC Executive Committee

From: Holly Coon (Alabama), Uniformity Committee Chair
Tommy Hoyt (Texas), Vice Chair

Re: Uniformity Committee Report to the Executive Committee

Date: May 11, 2017

During the fiscal year thus far, The Uniformity Committee has met three times in person: in July, 2016, in Kansas City, MO; in December, 2016, in Houston, TX; and in March, 2017, in San Diego, CA. Work groups established by the committee have met regularly by telephone. Those include the Compact Art. IV, Section 18 work group and the partnership work group. The Committee also met by phone on August 9, 2016.

Projects by Status

Before the Executive Committee:

- None

Pending Bylaw 7 Survey

- None

Current Uniformity Committee Projects:

- Art. IV, Section 18 Work Group
- Partnership Work Group
- Model Sales and Use Tax Notice and Reporting Statute

Summaries of Projects

Model Sales and Use Tax Notice and Reporting Statute - The model would require remote sellers to notify in-state purchasers of a potential tax liability at the time of sale and make annual reports to each in-state purchaser and to the state. De minimis exceptions and penalties are provided. The Uniformity Committee approved a draft in March, 2011. Later that month, the Executive Committee approved the draft for public hearing. The hearing was held, and the hearing officer's report and recommendations were presented to the Executive Committee, which recommended approval of a Bylaw 7 survey. The proposal came back before the Executive Committee in December 2011, after not passing the Bylaw 7 survey, and clarifications were requested. The Uniformity Committee made those clarifications and the Executive Committee took the matter up again in May, 2012. During that meeting, the Executive Committee voted to retain the proposal pending a decision in *Direct Marketing Ass'n v. Brohl*. The Tenth Circuit has now ruled that the Colorado statute is constitutional and that *Quill* does not apply to the information reporting requirements. *Direct Marketing Ass'n v. Brohl*, 814 F.3d 1129 (2016). The Direct Marketing Association filed a petition with the U.S. Supreme Court and Colorado filed

a conditional cross-petition. On December 12, 2016, the Court denied both the petition and cross-petition. At the meeting of the Uniformity Committee on March 8, 2017, the committee voted to reconvene a work group and reconsider the model statute for any necessary revisions. The group will begin work in June, 2017.

Amendments to the MTC Model Allocation and Apportionment Regulations (Combining the work of the Sec. 1 and Sec. 17 Work Groups) - Work on regulations to implement changes to Compact, Art. IV, Sections 1 and 17 was begun November 6, 2014. The work groups completed their work which takes the form of draft amendments to the MTC Model Allocation and Apportionment Regulations, and submitted a draft to the Uniformity Committee, which approved that draft with one minor change on December 10, 2015. The Uniformity Committee submitted the draft to the Executive Committee on December 11, 2015 for its consideration. The Executive Committee approved the draft for public hearing on January 29, 2016. On March 9, 2016, the Brian Hamer, acting as the Commission's Hearing Officer, conducted a public hearing taking both written and oral comments and also extended the period for comments after the hearing. The report and recommendations of the Hearing Officer were made to the Executive Committee for consideration at its May meeting. The Executive Committee referred issues regarding the proposed amendments back to the Uniformity Committee and asked for a report back on July 28, 2016. The Uniformity Committee made a report and the Executive Committee accepted certain changes to the amendments and rejected others. It also asked the Uniformity Committee to make one clarification and also requested MTC staff to conduct a survey of states about the possible insertion of a mediation provision. The Uniformity Committee made the clarification and the staff reported on its survey of states to the Executive Committee in its phone meeting of October 4, 2016. The Executive Committee gave final approval to certain changes to the amendments and instructed that they be sent out for bylaw 7 survey of the states. That survey was sent on October 26, 2016. A majority of interested states indicated they would consider adopting the amendments, and they were adopted by the commission February 24, 2017.

Art. IV, Section 18 Work Group – The Uniformity Committee formed a work group to consider issues created by the Commission's adoption of amendments to Compact, Art. IV (both amendments to Section 18 itself and other sections) and to recommend rules or amendments to model rules to address those issues. Meetings of that work group were suspended while the Uniformity Committee considered issues referred by the Executive Committee related to proposed amendments to the model General Allocation and Apportionment Regulations. The work group resumed its meetings (by phone) and is currently in the final stages of the project, drafting and testing examples.

Partnership Work Group – The Uniformity Committee commenced an informational project and then formed a work group to begin consideration of issues that affect the application of state taxes to partnerships and to consider the implications of new federal audit and adjustment rules. In light of the uncertainty regarding how the IRS will implement new partnership rules, during its meeting in December, 2016, the Uniformity Committee directed the group to proceed on any possible items, and to give input to the IRS if possible. A number of states have been participating in work group calls. Since the subject matter is so complex, MTC staff and work group members, in addition to discussing IRS rules, are also engaged in a significant amount of education. Due to this need, the work group meetings have been extended to an hour and a half every two weeks. At the March, 2017, meeting, the Uniformity Committee expanded the scope of the work group to address entity-level taxes.

Other

The Uniformity Committee has also been asked to consider two proposals to modify models already adopted by the Commission. The first is the model for Reporting Federal Tax Adjustments with Accompanying Model Regulations which was adopted by the Commission in 2003. A joint task force of the ABA/AICPA has asked the committee to review a proposal to clarify what is meant by "final determination" and to provide for other modifications to the model. The Committee has agreed that Commission staff

should monitor the task force project, as necessary, and has agreed that it will review any proposal submitted by the task force.

The other proposal has to do with the Commission's Model Statutes for the Collection and Remittance of Lodging Taxes by Accommodations Intermediaries, adopted by the Commission in 2012. This proposal has been submitted by representatives of the hotel and lodging industry and had been informally commented on by representatives of online travel companies and Airbnb. Assuming that industry representatives can come to consensus on needed modifications to the model, the Committee has agreed to review those modifications.